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Patent and Trademark Office
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AUGUST 12, 20

PTAS

MARGER JOHNSON MCCOLLUM, P.C.
ALEXANDER C. JOHNSON, JR.
1030 S.W. MORRISON ST.
PORTLAND, OREGON 97205



700039767A

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 08/11/2003

REEL/FRAME: 013862/0618
NUMBER OF PAGES: 5

BRIEF: MERGER (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

INDIVOS CORPORATION

DOC DATE: 07/23/2003

ASSIGNEE:

INDIVOS CORPORATION
ONE MARKET STREET, SPEAR TOWER,
41ST FLOOR
SAN FRANCISCO, CALIFORNIA 94105

SERIAL NUMBER: 09215058
PATENT NUMBER:

FILING DATE: 12/17/1998
ISSUE DATE:

SERIAL NUMBER: 09398914
PATENT NUMBER:

FILING DATE: 09/16/1999
ISSUE DATE:

SERIAL NUMBER: 09441107
PATENT NUMBER:

FILING DATE: 11/16/1999
ISSUE DATE:

SERIAL NUMBER: 09639948
PATENT NUMBER:

FILING DATE: 08/17/2000
ISSUE DATE:

Exhibit AA

013862/0618 PAGE 2

SERIAL NUMBER: 09731536	FILING DATE: 12/06/2000
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 09794810	FILING DATE: 02/26/2001
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 09815434	FILING DATE: 03/22/2001
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 09871241	FILING DATE: 05/30/2001
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 09879370	FILING DATE: 06/11/2001
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 10056982	FILING DATE: 01/23/2002
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 10120328	FILING DATE: 04/10/2002
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 10241374	FILING DATE: 09/10/2002
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SERIAL NUMBER: 10619990	FILING DATE:
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SERIAL NUMBER: 08705399	FILING DATE: 08/29/1996
PATENT NUMBER: 5870723	ISSUE DATE: 02/09/1999
SERIAL NUMBER: 08902151	FILING DATE: 07/29/1997
PATENT NUMBER: 5982914	ISSUE DATE: 11/09/1999

013862/0618 PAGE 3

SERIAL NUMBER: 09244784
PATENT NUMBER: 6012039

FILING DATE: 02/05/1999
ISSUE DATE: 01/04/2000

SERIAL NUMBER: 09098318
PATENT NUMBER: 6131464

FILING DATE: 06/16/1998
ISSUE DATE: 10/17/2000

SERIAL NUMBER: 09245501
PATENT NUMBER: 6154879

FILING DATE: 02/05/1999
ISSUE DATE: 11/28/2000

SERIAL NUMBER: 09243208
PATENT NUMBER: 6192142

FILING DATE: 02/02/1999
ISSUE DATE: 02/20/2001

SERIAL NUMBER: 09239595
PATENT NUMBER: 6230148

FILING DATE: 01/29/1999
ISSUE DATE: 05/08/2001

SERIAL NUMBER: 09239570
PATENT NUMBER: 6269348

FILING DATE: 01/29/1999
ISSUE DATE: 07/31/2001

SERIAL NUMBER: 09183215
PATENT NUMBER: 6366682

FILING DATE: 10/30/1998
ISSUE DATE: 04/02/2002

SERIAL NUMBER: 09357718
PATENT NUMBER: 6397198

FILING DATE: 07/20/1999
ISSUE DATE: 05/28/2002

SERIAL NUMBER: 09330253
PATENT NUMBER: 6411728

FILING DATE: 06/10/1999
ISSUE DATE: 06/25/2002

SERIAL NUMBER: 09848867
PATENT NUMBER: 6581042

FILING DATE: 05/03/2001
ISSUE DATE: 06/17/2003

SERIAL NUMBER: 10143430
PATENT NUMBER: 6591002

FILING DATE: 05/09/2002
ISSUE DATE: 07/08/2003

SERIAL NUMBER: 10114587
PATENT NUMBER: 6594376

FILING DATE: 04/01/2002
ISSUE DATE: 07/15/2003

SERIAL NUMBER: 29097014
PATENT NUMBER: D425873

FILING DATE: 11/25/1998
ISSUE DATE: 05/30/2000

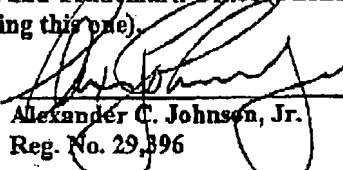
SHAREILL COLES, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

Certificate of Facsimile Transmission

08/11/2003
700039767

I hereby certify that the attached Transmittal Letter and Assignment document is being facsimile transmitted to the Assignment Division of the Patent and Trademark Office (Phone No. (703) 306-5995) on the date shown below.
(Total pages transmitted is 5 -including this one).

Date: August 11, 2003


Alexander C. Johnson, Jr.
Reg. No. 29,896PATENT APPLICATION
Attorney's Do. No. 8514-111

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Mail Stop Assignment Recordation Services
Director of the U.S. Patent and
Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party conveying an interest: **INDIVOS CORPORATION**, a Delaware corporation
2. Name and address of party receiving an interest: **INDIVOS CORPORATION**, a Delaware corporation,
One Market Street, Spear Tower, 41st Floor, San Francisco, California 94105
3. Description of the interest conveyed: Merger - Indivos Corporation; Indivos Acquisition Corp. and
Solidus Networks, Inc.

Date of execution of attached document: July 23, 2003

4. Application number(s) or patent number(s). Additional sheet attached? Yes

1.	5,613,012	3/18/1997
2.	5,615,277	3/25/1997
3.	5,737,439	4/7/1998
4.	5,764,789	6/9/1998
5.	5,802,199	9/1/1998
6.	5,805,719	9/8/1998
7.	5,838,812	11/17/1998
8.	5,870,723	2/9/1999
9.	5,982,914	11/9/1999
10.	6,012,039	1/4/2000
11.	6,131,464	10/17/2000
12.	6,154,879	11/28/2000
13.	6,192,142	2/20/2001
14.	6,230,148	5/8/2001
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17.	6,397,198	5/28/2002
18.	6,411,728	6/25/2002
19.	6,581,042	6/17/2003

20.	6,591,002	7/8/2003
21.	6,594,376	7/15/2003
22.	D425,873	5/30/2000
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24.	09/398,914	9/16/1999
25.	09/441,107	11/16/1999
26.	09/639,948	8/17/2000
27.	09/731,536	12/6/2000
28.	09/794,810	2/26/2001
29.	09/815,434	3/22/2001
30.	09/871,241	5/30/2001
31.	09/879,370	6/11/2001
32.	10/056,982	1/23/2002
33.	10/120,328	4/10/2002
34.	10/241,374	9/10/2002
35.	10/619,990	7/14/2003

5. Name and address of party to whom correspondence concerning document should be mailed:

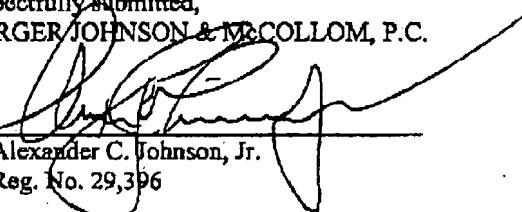
Alexander C. Johnson, Jr.
MARGER JOHNSON & McCOLLOM, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

6. Number of applications and patents involved: 35

7. Please charge our Deposit Account Number 13-1703 for the \$1,400 recordal fee. Any deficiency or overpayment should be charged or credited to deposit account number 13-1703.

8. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Respectfully submitted,
MARGER JOHNSON & McCOLLOM, P.C.

By 
Alexander C. Johnson, Jr.
Reg. No. 29,396

1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

Total number of pages comprising cover sheet and attached assignment: 5

cc: Steve Zelinger

CERTIFICATE OF MERGER**OF****Indivos Acquisition Corp.
a Delaware corporation****WITH AND INTO****Indivos Corporation
a Delaware corporation****UNDER SECTION 251 OF THE GENERAL
CORPORATION LAW OF THE STATE OF DELAWARE**

The undersigned corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify that:

1. The name and state of incorporation of each of the constituent corporations of the merger is as follows:

Name	State of Incorporation
Indivos Corporation.	Delaware
Indivos Acquisition Corp.	Delaware

2. The Agreement and Plan of Merger by and among Solidus Networks, Inc., Indivos Corporation and Indivos Acquisition Corp. dated as of March 14, 2003 (the "Merger Agreement"), has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 251 (and, with respect to Indivos Acquisition Corp., by the written consent of its sole stockholder in accordance with Section 228) of the General Corporation Law of the State of Delaware.

3. The name of the surviving corporation (the "Surviving Corporation") is Indivos Corporation.

4. The amended and restated certificate of incorporation of Indivos Corporation as in effect immediately prior to the effective time of the merger, shall be the certificate of incorporation of the Surviving Corporation, provided that, at the effective time of the merger, said certificate of incorporation shall be amended as follows:

Article IV shall be deleted in its entirety and substituted in lieu thereof a new Article IV which shall provide:

A. **Classes of Stock.** This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is Two Thousand (2,000) shares. One Thousand (1,000) shares shall be Common Stock, each having a par value of one-hundredth of one cent (\$.0001). One

Thousand (1,000) shares shall be Preferred Stock, each having a par value of one-hundredth of one cent (\$.0001).

B. **Preferred Stock.** The Preferred Stock may be issued from time to time in one or more series. The board of directors of the corporation (the "Board of Directors") is hereby expressly authorized to provide for the issue of all of any of the remaining unissued and undesignated shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the Delaware General Corporation Law. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

5. The executed Merger Agreement is on file at the principal place of business of the Surviving Corporation. The address of the principal place of business of the Surviving Corporation is One Market Plaza, 41st Floor, San Francisco, California 94105.

6. A copy of the executed Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation.

IN WITNESS WHEREOF, this Certificate of Merger is hereby executed on behalf of Indivos Corporation.

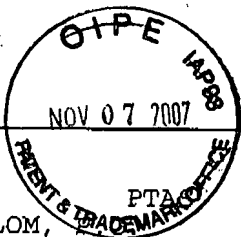
Dated as of July 23, 2003

Indivos Corporation,
a Delaware corporation

By: Robert Goldberg
Name: Robert Goldberg
Title: Chief Executive Officer



UNITED STATES
PATENT AND
TRADEMARK OFFICE



CORRECTED
NOTICE

OCTOBER 03, 2003

MARGER JOHNSON & MCCOLLOM,
ALEXANDER C. JOHNSON, JR.
1030 S.W. MORRISON STREET
PORTLAND, OR 97205

Chief Financial Officer and Chief Administrative Officer
Washington, DC 20231
www.uspto.gov

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

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RECORDATION DATE: 09/16/2003

REEL/FRAME: 013986/0001
NUMBER OF PAGES: 97

BRIEF: ANNULMENT OF ASSIGNMENT

ASSIGNOR:

INDIVOS CORPORATION, A DELAWARE
CORPORATION

DOC DATE: 09/12/2003

ASSIGNEE:

INDIVOS CORPORATION, A DELAWARE
CORPORATION
ONE MARKET STREET, SUITE 700
SAN FRANCISCO, CALIFORNIA 94105

SERIAL NUMBER: 09215058
PATENT NUMBER:

FILING DATE: 12/17/1998
ISSUE DATE:

SERIAL NUMBER: 09398914
PATENT NUMBER:

FILING DATE: 09/16/1999
ISSUE DATE:

SERIAL NUMBER: 09441107
PATENT NUMBER:

FILING DATE: 11/16/1999
ISSUE DATE:

SERIAL NUMBER: 09639948
PATENT NUMBER:

FILING DATE: 08/17/2000
ISSUE DATE:

Exhibit BB

013986/0001 PAGE 2

SERIAL NUMBER: 09731536	FILING DATE: 12/06/2000
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 09794810	FILING DATE: 02/26/2001
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 09815434	FILING DATE: 03/22/2001
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SERIAL NUMBER: 10056982	FILING DATE: 01/23/2002
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SERIAL NUMBER: 10120328	FILING DATE: 04/10/2002
PATENT NUMBER:	ISSUE DATE:
SERIAL NUMBER: 10241374	FILING DATE: 09/10/2002
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013986/0001 PAGE 3

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PATENT NUMBER: 6012039	ISSUE DATE: 01/04/2000
SERIAL NUMBER: 09098318	FILING DATE: 06/16/1998
PATENT NUMBER: 6131464	ISSUE DATE: 10/17/2000
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PATENT NUMBER: 6154879	ISSUE DATE: 11/28/2000
SERIAL NUMBER: 09243208	FILING DATE: 02/02/1999
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PATENT NUMBER: 6230148	ISSUE DATE: 05/08/2001
SERIAL NUMBER: 09239570	FILING DATE: 01/29/1999
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SERIAL NUMBER: 10114587	FILING DATE: 04/01/2002
PATENT NUMBER: 6594376	ISSUE DATE: 07/15/2003
SERIAL NUMBER: 29097014	FILING DATE: 11/25/1998
PATENT NUMBER: D425873	ISSUE DATE: 05/30/2000

MARGARET LASALLE, PARALEGAL
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Assignment Recordation Services
Director of the U.S. Patent and
Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

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2. Name and address of party receiving an interest: **INDIVOS CORPORATION**, a Delaware corporation,
One Market Street, Suite 700, San Francisco, California 94105
3. Description of the interest conveyed: Annulment of Assignment

Date of execution of attached document: September 12, 2003

4. Application number(s) or patent number(s). Additional sheet attached? Yes

1.	5,613,012	3/18/1997
2.	5,615,277	3/25/1997
3.	5,737,439	4/7/1998
4.	5,764,789	6/9/1998
5.	5,802,199	9/1/1998
6.	5,805,719	9/8/1998
7.	5,838,812	11/17/1998
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12.	6,154,879	11/28/2000
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20.	6,591,002	7/8/2003
21.	6,594,376	7/15/2003
22.	D425,873	5/30/2000
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25.	09/441,107	11/16/1999
26.	09/639,948	8/17/2000
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28.	09/794,810	2/26/2001
29.	09/815,434	3/22/2001

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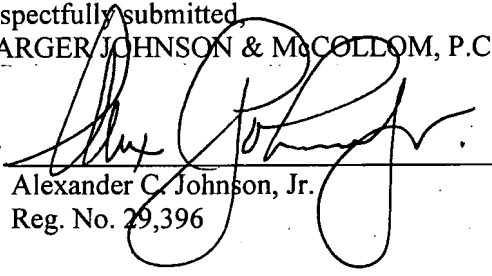
Alexander C. Johnson, Jr.
MARGER JOHNSON & McCOLLOM, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

6. Number of applications and patents involved: 35

7. Please charge our Deposit Account Number 13-1703 for the \$1,400 recordal fee. Any deficiency or overpayment should be charged or credited to deposit account number 13-1703.
8. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Respectfully submitted,
MARGER JOHNSON & McCOLLOM, P.C.

By


Alexander C. Johnson, Jr.
Reg. No. 29,396

1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

Total number of pages comprising cover sheet and attached assignment:

Attorney's Docket No. 8514-111

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Assignor: INDIVOS CORPORATION,
a Delaware corporation

Address: Suite 700
One Market Street
San Francisco, California 94105

Assignee: INDIVOS CORPORATION,
a Delaware corporation

Address: Suite 700
One Market Street
San Francisco, California 94105

In re:

Patent Application

Serial No.	Filed	Patent No. Issued
08/345,523	November 28, 1994	5,615,277 March 25, 1997
08/442,895	May 17, 1995	5,613,012 March 18, 1997
08/687,251	July 25, 1996	5,838,812 November 17, 1998
08/705,399	August 29, 1996	5,870,723 February 9, 1999
08/722,629	September 27, 1996	5,764,789 June 9, 1998
08/739,313	October 29, 1996	5,737,439 April 7, 1998
08/818,872	March 17, 1997	5,802,199 September 1, 1998
08/820,008	March 18, 1997	5,805,719 September 8, 1998
08/902,151	July 29, 1997	5,982,914 November 9, 1999
09/098,318	June 16, 1998	6,131,464 October 17, 2000
09/183,215	October 30, 1998	6,366,682 April 2, 2002
09/215,058	December 17, 1998	
09/239,570	January 29, 1999	6,269,348 July 31, 2001
09/239,595	January 29, 1999	6,230,148 May 8, 2001
09/243,208	February 2, 1999	6,192,142 February 20, 2001
09/244,784	February 5, 1999	6,012,039 January 4, 2000
09/245,501	February 5, 1999	6,154,879 November 28, 2000
09/330,253	June 10, 1999	6,411,728 June 25, 2002
09/357,718	July 20, 1999	6,397,198 May 28, 2002
09/398,914	September 16, 1999	
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29/097,014	November 25, 1998	D425,873 May 30, 2000

ANNULMENT OF ASSIGNMENT

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P.O. Box 1450
Alexandria, VA 22313-1450

INDIVOS CORPORATION hereby annuls all prior assignments of any of the above patents and patent applications from INDIVOS CORPORATION to EXCEL INNOVATIONS, INC. and from EXCEL INNOVATIONS, INC. to AVIV, LLC, executed by Ned Hoffman since December 31, 2002, including specifically all assignments dated February 3, 2003, and any future assignments, for the reasons set forth in the accompanying STATEMENT THAT NED HOFFMAN LACKED AUTHORITY TO EXECUTE DOCUMENTS ON BEHALF OF INDIVOS CORPORATION and Exhibits submitted herewith.

Pursuant to 37 CFR § 3.71 (a), INDIVOS CORPORATION, assignee of the above-described patent applications/patents, hereby excludes Ned Hoffman and his companies, EXCEL INNOVATIONS, INC. and AVIV, LLC, and Otto Lee, Reg. No. 37,871, and Ali Kamarei, Reg. No. 37,000, and any persons acting on their behalf, from conducting prosecution, inspecting or granting powers to inspect or changing address or entering a power of attorney or taking any other action whatsoever in the above-referenced patents and patent applications.

INDIVOS CORPORATION,
a Delaware corporation

Dated: Sept. 15, 2003

By Mark G. Thompson
Mark G. Thompson
Treasurer

Suite 700
One Market Street
San Francisco, California 94105

STATEMENT THAT NED HOFFMAN LACKED AUTHORITY TO EXECUTE
DOCUMENTS ON BEHALF OF INDIVOS CORPORATION

FACTS

Indivos Corporation was originally known as SmartTouch, Inc, and is successor in interest of SmartTouch, LLC. SmartTouch, Inc. changed its name to VeriStar Corporation on 10 July 2000, *see* Amended and Restated Certificate of Incorporation, a copy of which is attached as Exhibit A, which changed its name to Indivos Corporation on 15 August 2001 *see* Certificate of Amendment of Amended and Restated Certificate of Incorporation of VeriStar Corporation, a copy of which is attached as Exhibit B. Although Ned Hoffman had been an officer and director of SmartTouch, Inc. in the past, he has not served as an officer or director of Indivos Corporation since 29 November 1999. *See* Declaration of Robert Goldberg, ¶ 4.

In 1999, there was a falling out between Mr. Hoffman and the leadership of Indivos Corporation. *See* Declaration of Robert Goldberg, ¶ 3. On November 29, 1999, Mr. Hoffman terminated his employment with Indivos Corporation. *See* Declaration of Robert Goldberg, ¶ 4. On 16 June 2000, Mr. Hoffman and Indivos Corporation (then still known as SmartTouch, Inc.) entered into a Settlement Agreement and various related agreements. *See* Declaration of Robert Goldberg, ¶ 5. Although Mr. Hoffman performed limited consulting services assisting in prosecuting patent applications for Indivos Corporation after 16 June 2000, Mr. Hoffman has not been involved since some time in 2002. *See* Declaration of Robert Goldberg, ¶¶ 7-8. Critically, Mr. Hoffman assigned any and all rights in which he is named as inventor or coinventor to Indivos, and such assignments were recorded in the U.S. Patent and Trademark Office on the dates shown in the attached listing (see Exhibit I).

On 3 February 2003, Mr. Hoffman, without authority from Indivos Corporation, executed assignments purporting to assign issued patents and patent applications from Indivos Corporation to Excel Innovations, Inc., and from Excel Innovations Inc. to Aviv LLC. *See* Assignment of Letters Patent, copies of which are attached as Exhibits C and E, and Assignments of Applications, copies of which are attached as Exhibit D1 and D2. Mr. Hoffman also executed a power of attorney, purporting to give authority to prosecute cases on behalf of Indivos Corporation, and changing the correspondence address to Otto Lee, Registration No. 37,871.

See Power of Attorney, a copy of which is attached as Exhibit F, page 1. Mr. Hoffman claimed to have authority to grant the Power in a Statement Under 37 CFR 3.73(b), Exhibit F, page 2.

These purported assignments and the power of attorney were recorded by the U. S. Patent and Trademark Office between 3 February 2003 and 26 March 2003. Mr. Hoffman then granted a Power to Inspect, entered in the file of Serial No. 10/241,374 on April 2, 2003. See Exhibit G. The U.S. Patent and Trademark Office Assignment Abstract of Title shows that Mr. Hoffman's unauthorized assignments were recorded (see Exhibit H). See Declaration of Alexander C. Johnson, Jr., ¶ 4. Mr. Hoffman did not notify Indivos Corporation that he was submitting these documents, nor did he seek the consent of Indivos Corporation to do so. See Declaration of Robert Goldberg, ¶¶ 6 and 9.

ARGUMENT

To properly act in a patent application, 37 C.F.R. § 3.73(b)(1) requires an assignee to establish ownership to the satisfaction of the Commissioner. The assignee must submit "a signed statement identifying the assignee, accompanied by either:

"(i) Documentary evidence of a chain of title from the original owner to the assignee. . .; or

"(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the [United States Patent & Trademark] Office. . . ."

In executing the purported assignments from Indivos Corporation to Excel Innovations, Inc. and the power of attorney on 3 February 2003, Mr. Hoffman signed the documents "President Excel for Indivos Corporation."

This signature is highly irregular: Mr. Hoffman, as president of the purported *assignee* of the above-referenced issued patents and patent applications, executed the assignments on behalf of the *assignor*. This seems a clear conflict of interest, compounded by his failure to provide any notice of his actions to the assignor or furnish any basis for usurping authority to sign for Indivos Corporation.

As stated in the accompanying Declaration of Robert Goldberg, Mr. Hoffman has had no authority to act on behalf of Indivos Corporation since at least 2000. Without authority to act on behalf of Indivos Corporation, the assignments from Indivos Corporation to Excel Innovations,

Inc. are not valid. Therefore, the assignments from Indivos Corporation to Excel Innovations, Inc. fail to satisfy 37 C.F.R. § 3.73.

Further, because the assignment from Indivos Corporation to Excel Innovations, Inc. is not valid, Excel Innovations, Inc. had no interest in the above-referenced issued patents and patent applications to assign to Aviv LLC. Therefore, the assignment from Excel Innovations, Inc. to Aviv LLC fails to satisfy 37 C.F.R. § 3.73.

In addition, 37 C.F.R. § 1.34 requires that, for an attorney to be recognized as acting in a representative capacity, the power of attorney must be executed by the person or persons entitled to prosecute an application. Because the assignments discussed above are not proper, none of Mr. Hoffman, Excel Innovations, Inc., and Aviv LLC is entitled to prosecute the above-referenced patent applications. Accordingly, the power of attorney executed by Mr. Hoffman on 3 February 2003, appointing Otto Lee to prosecute the above-referenced patent applications, is not properly executed.

As prior assignee, only Indivos Corporation, acting through a bona fide officer and its undersigned patent attorneys, has the authority to take action in matters pending before the U.S. Patent & Trademark Office. Further, as prior assignee, Indivos hereby excludes Ned Hoffman from inspection or any other access to the referenced patents and notes that any purported right of inspection of the referenced patents filed by Ned Hoffman is null and void.

Accordingly, the acts of Ned Hoffman described above have no legal effect.

If there are any questions, please call the undersigned.

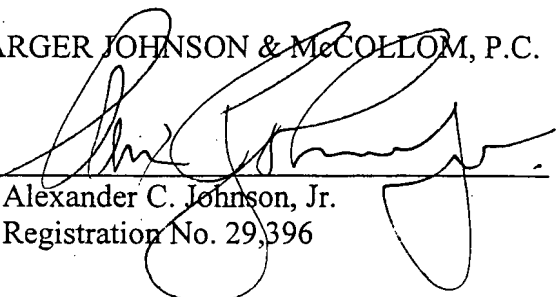
Respectfully submitted,

20575

Customer No.

MARGER JOHNSON & McCOLLOM, P.C.

By


Alexander C. Johnson, Jr.
Registration No. 29,396

1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Declaration re:

Patent Application

Serial No.	Filed	Patent No. Issued
08/345,523	November 28, 1994	5,615,277 March 25, 1997
08/442,895	May 17, 1995	5,613,012 March 18, 1997
08/687,251	July 25, 1996	5,838,812 November 17, 1998
08/705,399	August 29, 1996	5,870,723 February 9, 1999
08/722,629	September 27, 1996	5,764,789 June 9, 1998
08/739,313	October 29, 1996	5,737,439 April 7, 1998
08/818,872	March 17, 1997	5,802,199 September 1, 1998
08/820,008	March 18, 1997	5,805,719 September 8, 1998
08/902,151	July 29, 1997	5,982,914 November 9, 1999
09/183,215	October 30, 1998	6,366,682 April 2, 2002
09/215,058	December 17, 1998	
09/239,570	January 29, 1999	6,269,348 July 31, 2001
09/239,595	January 29, 1999	6,230,148 May 8, 2001
09/243,208	February 2, 1999	6,192,142 February 20, 2001
09/244,784	February 5, 1999	6,012,039 January 4, 2000
09/245,501	February 5, 1999	6,154,879 November 28, 2000
09/330,253	June 10, 1999	6,411,728 June 25, 2002
09/357,718	July 20, 1999	6,397,198 May 28, 2002
09/398,914	September 16, 1999	
09/441,107	November 16, 1999	
09/639,948	August 17, 2000	
09/731,536	December 6, 2000	
09/794,810	February 26, 2001	
09/815,434	March 22, 2001	
09/848,867	May 3, 2001	6,581,042 June 17, 2003
09/879,370	June 11, 2001	
10/056,982	January 23, 2002	
10/114,587	April 1, 2002	6,594,376 July 15, 2003
10/120,328	April 10, 2002	
10/143,430	May 9, 2002	6,591,002 July 8, 2003
10/241,374	September 10, 2002	

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF ROBERT GOLDBERG

I, Robert Goldberg, declare the following:

1. I was the President and Chief Executive Officer of Indivos Corporation, a Delaware Corporation having a place of business at 650 Harrison Street, San Francisco, CA 94107, from November 2002 until 24 July, 2003, when Indivos Corporation was merged into Solidus, Inc., also a Delaware Corporation. In addition, I was an early investor and have been a significant shareholder of Indivos Corporation since 1996, as well as the CEO and President of Indivos Corporation (then known as SmartTouch, Inc.) from July 1996 through December 1997. As the former President, CEO, and a significant shareholder of Indivos Corporation, I am informed and knowledgeable about the facts described below.
2. Ned Hoffman has been neither a director nor an officer of Indivos Corporation since at least 29 November 1999, and has had no management authority to act on behalf of Indivos Corporation since that date.
3. In 1999, a falling out occurred between Mr. Hoffman and Indivos Corporation.
4. On 29 November 1999, Mr. Hoffman terminated his employment with Indivos Corporation.
5. On 16 June 2000, Mr. Hoffman and Indivos Corporation (then still known as SmartTouch, Inc.) entered into a Settlement Agreement and various related agreements.
6. At least since he entered into the Settlement Agreement and other related agreements in June 2000, Mr. Hoffman has had no authority to act on behalf of Indivos Corporation.
7. Mr. Hoffman continued to perform services as a technical consultant for SmartTouch, Inc., and later VeriStar Corporation, for some months after entering into the Settlement Agreement, but without authority to direct any company matters.
8. Since some time in 2002, Mr. Hoffman has not been involved in the development of the intellectual property of Indivos Corporation. In particular, Mr. Hoffman was not President nor any other officer or director of Indivos Corporation, and was not otherwise authorized to act on behalf of Indivos Corporation, in February and March 2003 when he executed assignments purporting to transfer issued patents and patent applications from Indivos Corporation to Excel Innovations, Inc., and when he executed a power of attorney to Otto Lee. See attached Assignment of Letters Patent, Assignment of Application, Assignment of Letters Patent, and Power of Attorney, Exhibits C, D, E, and F, respectively.

9. Mr. Hoffman did not notify Indivos Corporation of the assignments and power of attorney he executed on 3 February 2003 and recorded between 3 February 2003 and 26 March 2003.

I, the undersigned, declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application of any patent issuing thereon.

DATED this 28th day of July, 2003.


Robert Goldberg

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Declaration re:

Patent Application

Serial No.	Filed	Patent No. Issued
08/345,523	November 28, 1994	5,615,277 March 25, 1997
08/442,895	May 17, 1995	5,613,012 March 18, 1997
08/687,251	July 25, 1996	5,838,812 November 17, 1998
08/705,399	August 29, 1996	5,870,723 February 9, 1999
08/722,629	September 27, 1996	5,764,789 June 9, 1998
08/739,313	October 29, 1996	5,737,439 April 7, 1998
08/818,872	March 17, 1997	5,802,199 September 1, 1998
08/820,008	March 18, 1997	5,805,719 September 8, 1998
08/902,151	July 29, 1997	5,982,914 November 9, 1999
09/098,318	June 16, 1998	6,131,464 October 17, 2000
09/183,215	October 30, 1998	6,366,682 April 2, 2002
09/215,058	December 17, 1998	
09/239,570	January 29, 1999	6,269,348 July 31, 2001
09/239,595	January 29, 1999	6,230,148 May 8, 2001
09/243,208	February 2, 1999	6,192,142 February 20, 2001
09/244,784	February 5, 1999	6,012,039 January 4, 2000
09/245,501	February 5, 1999	6,154,879 November 28, 2000
09/330,253	June 10, 1999	6,411,728 June 25, 2002
09/357,718	July 20, 1999	6,397,198 May 28, 2002
09/398,914	September 16, 1999	
09/441,107	November 16, 1999	
09/639,948	August 17, 2000	
09/731,536	December 6, 2000	
09/794,810	February 26, 2001	
09/815,434	March 22, 2001	
09/848,867	May 3, 2001	6,581,042 June 17, 2003
09/871,241	May 30, 2001	
09/879,370	June 11, 2001	
10/056,982	January 23, 2002	
10/114,587	April 1, 2002	6,594,376 July 15, 2003
10/120,328	April 10, 2002	
10/143,430	May 9, 2002	6,591,002 July 8, 2003
10/241,374	September 10, 2002	
10/619,990	July 14, 2003	
29/097,014	November 25, 1998	D425,873 May 30, 2000

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF ALEXANDER C. JOHNSON, JR.

I, Alexander C. Johnson, Jr., declare the following:

1. I am a patent attorney and director of Marger Johnson & McCollom, P.C., a professional corporation in Oregon having a place of business at 1030 SW Morrison St., Portland, OR 97205.

2. Indivos Corporation has been a client of Marger Johnson & McCollom, P.C. since at least April 2000 (then known as SmartTouch, Inc.). Marger Johnson & McCollom, P.C. has served as patent counsel of record to Indivos Corporation pursuant to powers of attorney duly executed by officers of Indivos Corporation.

3. At no time since Indivos Corporation became a client of Marger Johnson & McCollom, P.C. has Mr. Ned Hoffman been an officer of Indivos Corporation or otherwise empowered to act for Indivos Corporation or to direct any actions concerning its issued patents and patent applications.

4. The assignments, power of attorney, and recordation form cover sheets executed by Mr. Ned Hoffman dated 3 February 2003 and Mr. Otto Lee were recorded between 3 February 2003 and 26 March 2003. Mr. Hoffman granted a Power to Inspect which was entered in the file of Serial No. 10/241,374 on April 2, 2003 (Exhibit G). The U.S. Patent Office Assignment, Abstract of Title shows that Mr. Hoffman's unauthorized assignments have been recorded against this application (Exhibit H).

5. Mr. Hoffman did not notify me or Marger Johnson & McCollom, P.C. of the assignments and power of attorney he executed on 3 February 2003 or of the recordal thereof.

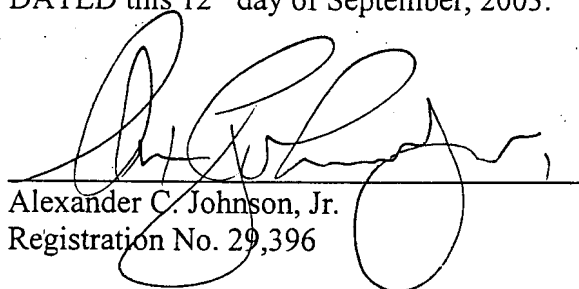
6. Mr. Hoffman assigned any and all rights in which he is named as inventor, or coinventor to Indivos, and such assignments were recorded in the U.S. Patent and Trademark Office on the dates shown in the attached listing (see Exhibit I).

7. Based on my personal knowledge of the above-referenced issued patents and patent applications, the title record of the above-referenced issued patents and patent applications, and my review of the purported assignments by Mr. Hoffman, all right, title, and interest in the above-referenced issued patents and patent application properly resides with

Indivos Corporation. Mr. Hoffman had no authority to divert ownership of the above-referenced issued patents and patent applications away from Indivos Corporation.

I, the undersigned, declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application of any patent issuing thereon.

DATED this 12th day of September, 2003.

A handwritten signature in black ink, appearing to read "Alex Johnson, Jr.", is written over a horizontal line. The signature is fluid and cursive.

Alexander C. Johnson, Jr.
Registration No. 29,396

Patent Attorney for Indivos Corporation

MARGER JOHNSON & McCOLLOM, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613
Facsimile No.: (503) 274-4622
alex@techlaw.com



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SEPTEMBER 28, 2001

PTAS

MARGER JOHNSON & MCCOLLOM, PC
ALEXANDER C. JOHNSON, JR.
1030 SW MORRISON STREET
PORTLAND, OREGON 97205



101793119A

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 07/24/2001

REEL/FRAME: 012010/0454
NUMBER OF PAGES: 22

BRIEF: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
SMARTTOUCH, INC.

DOC DATE: 07/10/2000

ASSIGNEE:
VERISTAR CORPORATION
155 GRAND AVENUE
SUITE 1050
OAKLAND, CALIFORNIA 94612

SERIAL NUMBER: 08442895
PATENT NUMBER: 5613012

FILING DATE: 05/17/1995
ISSUE DATE: 03/18/1997

SERIAL NUMBER: 08345523
PATENT NUMBER: 5615277

FILING DATE: 11/28/1994
ISSUE DATE: 03/25/1997

SERIAL NUMBER: 08739313
PATENT NUMBER: 5737439

FILING DATE: 10/29/1996
ISSUE DATE: 04/07/1998

SERIAL NUMBER: 08722629
PATENT NUMBER: 5764789

FILING DATE: 09/27/1996
ISSUE DATE: 06/09/1998

SERIAL NUMBER: 08818872
PATENT NUMBER: 5802199

FILING DATE: 03/17/1997
ISSUE DATE: 09/01/1998

SERIAL NUMBER: 08820008
PATENT NUMBER: 5805719

FILING DATE: 03/18/1997
ISSUE DATE: 09/08/1998

SERIAL NUMBER: 08687251
PATENT NUMBER: 5838812

FILING DATE: 07/25/1996
ISSUE DATE: 11/17/1998

SERIAL NUMBER: 08705399
PATENT NUMBER: 5870723

FILING DATE: 08/29/1996
ISSUE DATE: 02/09/1999

SERIAL NUMBER: 08902151
PATENT NUMBER: 5982914

FILING DATE: 07/29/1997
ISSUE DATE: 11/09/1999

SERIAL NUMBER: 09244784
PATENT NUMBER: 6012039

FILING DATE: 02/05/1999
ISSUE DATE: 01/04/2000

SERIAL NUMBER: 09098318
PATENT NUMBER: 6131464

FILING DATE: 06/16/1998
ISSUE DATE: 10/17/2000

SERIAL NUMBER: 09245501
PATENT NUMBER: 6154879

FILING DATE: 02/05/1999
ISSUE DATE: 11/28/2000

SERIAL NUMBER: 09243208
PATENT NUMBER: 6192142

FILING DATE: 02/02/1999
ISSUE DATE: 02/20/2001

SERIAL NUMBER: 09239595
PATENT NUMBER: 6230148

FILING DATE: 01/29/1999
ISSUE DATE: 05/08/2001

SERIAL NUMBER: 09183215
PATENT NUMBER:

FILING DATE: 10/30/1998
ISSUE DATE:

SERIAL NUMBER: 09330253
PATENT NUMBER:

FILING DATE: 06/10/1999
ISSUE DATE:

SERIAL NUMBER: 09239570
PATENT NUMBER: 6269348

FILING DATE: 01/29/1999
ISSUE DATE: 07/31/2001

SERIAL NUMBER: 09357718
PATENT NUMBER:

FILING DATE: 07/20/1999
ISSUE DATE:

SERIAL NUMBER: 09398914
PATENT NUMBER:

FILING DATE: 09/16/1999
ISSUE DATE:

SERIAL NUMBER: 09441107
PATENT NUMBER:

FILING DATE: 11/16/1999
ISSUE DATE:

SERIAL NUMBER: 60208680
PATENT NUMBER:

FILING DATE: 05/31/2000
ISSUE DATE:

SERIAL NUMBER: 29097014
PATENT NUMBER: D425873

FILING DATE: 11/25/1998
ISSUE DATE: 05/30/2000

012010/0454 PAGE 3

SEDLEY PYNE, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

EXHIBIT A
PAGE 3 OF 25

07-31-2001


 PATENT APPLICATION
 Attorney's Do. No. 8514-1

101793119

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOX ASSIGNMENT

 Commissioner of Patents and Trademarks
 Washington, D.C. 20231

7-24-01

JUL 24 2001

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest::

SmartTouch, Inc.

2. Name and address of party(ies) receiving an interest:

 Veristar Corporation
 155 Grand Avenue, Suite 1050
 Oakland, California 94612

3. Description of the interest conveyed:

☐ Assignment ☒ Change of Name ☐ Security Agreement ☐ Merger

Date of execution of attached document: July 10, 2000

4. Application number(s) or patent number(s). Additional sheet attached? Yes ___ No
- X

A. Patent Application No. B. Filed C. Patent No. D. Issued

08/442,895	5-17-95	5,613,012	3-18-97
08/345,523	11-28-94	5,615,277	3-25-97
08/739,313	10-29-96	5,737,439	4-7-98
08/722,629	9-27-96	5,764,789	6-9-98
08/818,872	3-17-97	5,802,199	9-1-98
08/820,008	3-18-97	5,805,719	9-8-98
08/687,251	7-25-96	5,838,812	11-17-98
08/705,399	8-29-96	5,870,723	2-9-99
08/902,151	7-29-97	5,982,914	11-9-99
09/244,784	2-5-99	6,012,039	1-4-00
09/098,318	6-16-98	6,131,464	10-17-00
09/245,501	2-5-99	6,154,879	11-28-00
09/243,208	2-2-99	6,192,142	2-20-01
09/239,595	1-29-99	6,230,148	5-8-01
09/183,215	10-30-98		
09/330,253	6-10-99		
09/239,570	1-29-99		
09/357,718	7-20-99		
09/398,914	9-16-99		
09/441,107	11-16-99		
60/208,680	5-31-00		
29/097,014	11-25-98	D425,873	5-30-00

 I HEREBY CERTIFY THAT THIS COR-
 RESPONDENCE IS BEING DEPOSITED
 WITH THE UNITED STATES POSTAL
 SERVICE AS FIRST CLASS MAIL IN AN
 ENVELOPE ADDRESSED TO:

☒ COMMISSIONER OF PATENTS AND
 TRADEMARKS, WASHINGTON D.C.
 20231

☐ ASSISTANT COMMISSIONER FOR
 PATENTS, WASHINGTON D.C. 20231

☐ ASSISTANT COMMISSIONER FOR
 TRADEMARKS, 2900 CRYSTAL DRIVE,
 ARLINGTON VA 22202-3513

ON: 17 July 2001

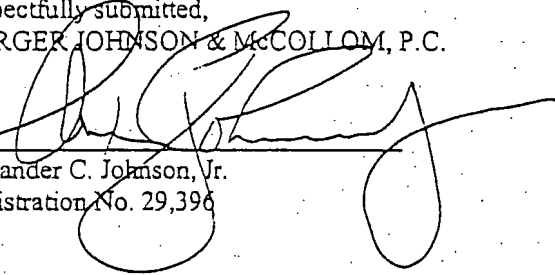
5. Name and address of party to whom correspondence concerning document should be mailed:

MARGER JOHNSON & McCOLLOM, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

6. Number of applications and patents involved: 22
7. Enclosed is our check for \$ 880.00
8. Any deficiency or overpayment should be charged or credited to deposit account number 13-1703.
9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Dated: July 16, 2001

Respectfully submitted,
MARGER JOHNSON & McCOLLOM, P.C.

By 
Alexander C. Johnson, Jr.
Registration No. 29,396

MARGER JOHNSON & McCOLLOM, P.C.
1030 SW Morrison Street
Portland, OR 97205
(503) 222-3613

Total number of pages comprising
cover sheet and attached assignment: 22

State of Delaware
Office of the Secretary of State

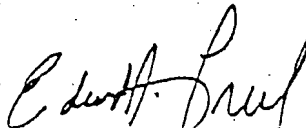
PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SMARTTOUCH, INC.", CHANGING ITS NAME FROM "SMARTTOUCH, INC." TO "VERISTAR CORPORATION", FILED IN THIS OFFICE ON THE TENTH DAY OF JULY, A.D. 2000, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

EXHIBIT A
PAGE 6 OF 25




Edward J. Freel, Secretary of State

2731001 8100

AUTHENTICATION: 0548860

001347851

07-10-00

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SMARTTOUCH, INC.

The undersigned, Philip J. Gioia, hereby certifies that:

1. He is the duly elected and acting President and Chief Executive Officer of SmartTouch, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on March 20, 1997.
3. The Amended and Restated Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is VeriStar Corporation (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

A. Classes of Stock. This Corporation is authorized to issue two classes of shares of stock, to be designated Common and Preferred, respectively. This Corporation is authorized to issue TWENTY-FIVE MILLION (25,000,000) shares of Common Stock and FIFTEEN MILLION

FIVE HUNDRED THOUSAND (15,500,000) shares of Preferred Stock. The shares of Preferred Stock may be issued from time to time in series. The par value of Common Stock and Preferred Stock is \$0.0005 per share. FOUR MILLION SEVEN HUNDRED TWENTY SEVEN THOUSAND NINE HUNDRED TWENTY SEVEN (4,727,927) shares of Preferred Stock shall be designated "Series A Preferred Stock" (the "Series A Preferred Stock"). SIX MILLION ONE HUNDRED EIGHTY SEVEN THOUSAND SEVEN HUNDRED NINETY (6,187,790) shares of Preferred Stock shall be designated "Series B Preferred Stock" and FOUR MILLION FIVE HUNDRED EIGHTY FOUR THOUSAND TWO HUNDRED EIGHTY THREE (4,584,283) shares of Preferred Stock shall be designated "Series C Preferred Stock" and together with the Series B Preferred Stock, the "Series B-C Preferred Stock". The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock and the Series B-C Preferred Stock are as set forth below in this Article IV.

B. Rights, Preferences and Restrictions of Series A Preferred Stock and Series B-C Preferred Stock.

1. Dividend Rights

(a) The holders of Series A Preferred Stock (the "Series A Preferred Stockholders") and the holders of the Series B-C Preferred Stock (the "Series B-C Preferred Stockholders") shall be entitled to receive, when and if declared by the Board of Directors, noncumulative cash dividends out of any assets of the Corporation at the time legally available therefor, prior and in preference to the holders of the Common Stock (the "Common Stockholders"), at the annual rate of 2/10th of One Cent (\$0.002) per share on each outstanding share of Series A and Series B-C Preferred Stock, in each case as appropriately adjusted for stock dividends, subdivisions, split-ups, or combinations and similar events as provided herein.

(b) So long as any shares of Series A and Series B-C Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any shares of Common Stock, nor shall any shares of Common Stock of this Corporation be purchased, redeemed or otherwise acquired for value by the Corporation until all dividends on the Series A and the Series B-C Preferred Stock shall have been paid or declared and set aside for payment as set forth in section 1(a) above.

(c) If, after payment to the Series A and the Series B-C Preferred Stockholders of the full dividend set forth in section 1(a) above during any fiscal year of the Corporation, any dividend is declared and paid on any share of Common Stock, an additional dividend shall be paid to the Series A Preferred Stockholders and the Series B-C Preferred Stockholders of any assets of the Corporation at the time legally available therefor, in an amount per share of the applicable series of Preferred Stock as would be payable on the number of shares of Common Stock into which each such share of Preferred Stock could be converted as of the record date fixed for the determination of the holders of the Common Stock entitled to receive such dividend, such per share dividend amounts being pari passu as among the Common Stockholders, holders of the Series A and the Series B-C Preferred Stockholders. Such dividends shall be payable only when and if declared by the Board of Directors and shall be noncumulative.

(d) The provisions of sections 1(a), 1(b) and 1(c) hereof shall not restrict the Corporation from making (i) any dividend payable in shares of Common Stock, or (ii) any distributions in connection with the repurchase at or below the purchase price (or such other price as may be unanimously agreed to by the Board of Directors) of shares of Common Stock issued to or held by officers, directors or employees of, or consultants, advisers and others who provide services to, this Corporation or its subsidiaries ("Compensatory Stock") upon termination of such employment or services relationship pursuant to plans, agreements or arrangements (whether now existing or hereafter entered into) providing for the right of said repurchase between the Corporation and such persons ("Compensatory Stock Repurchase Rights") or in exercise of the Corporation's right of first refusal upon a proposed transfer of shares. Each Series A and Series B-C Preferred Stockholder shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code, to distributions made by this Corporation in connection with the repurchase of Compensatory Shares.

2. Redemption. The Series A Preferred Stock and the Series B-C Preferred Stock are not redeemable.

3. Voting Rights.

(a) The Series A Preferred Stockholders and the Series B-C Preferred Stockholders shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the Common Stockholders, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation ("Bylaws"), and shall be entitled to vote, together with Common Stockholders, with respect to any question upon which Common Stockholders have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock and Series B-C Preferred Stock held by each stockholder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Notwithstanding section 3(a) above, the Board of Directors will be elected as follows:

(i) the Series B Preferred Stockholders shall be entitled, voting as a separate class, to elect one (1) director, *provided that* the outstanding Series B stock continues to represent at least ten percent (10%) of the outstanding share capital of the Company on an as converted fully diluted basis;

(ii) the Series C Preferred Stockholders shall be entitled, voting as a separate class, to elect one (1) director, *provided that* the outstanding Series C stock continues to represent at least ten percent (10%) of the outstanding share capital of the Company on an as converted fully diluted basis;

(iii) the Series A and the Common Stockholders shall be entitled, voting as a separate class, to elect four (4) directors; and

notwithstanding any provisions of the Bylaws to the contrary, the stockholders entitled to elect a particular director pursuant to subparagraphs (i), (ii) or (iii) of this section 3(b) shall be entitled to remove such director or to fill a vacancy in the seat formerly held by such director, by a separate class vote of such stockholders and otherwise in accordance with the applicable provisions of the General Corporation Law of the State of Delaware.

4. No Fractional Shares. No fractional shares shall be issued upon conversion of shares of Series A Preferred Stock or Series B-C Preferred Stock. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock or Series B-C Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. If the conversion would result in any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay the holder an amount in cash equal to the fair market value of such fractional share on the date of conversion (as determined in good faith by the Board of Directors).

5. Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation will dispatch to each Series A Preferred Stock and Series B-C Preferred Stockholder at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or rights, and the amount and character of such dividend, distribution or right.

6. Other Notices. Except as otherwise provided herein, any notices required by the provisions of this Certificate to be given to the Series A Preferred Stockholders or Series B-C Preferred Stockholders must be in writing and will be deemed given upon personal delivery, one day after deposit with a reputable overnight courier service for overnight delivery or after transmission by facsimile telecopier with confirmation of successful transmission, or three business days after deposit in the United States mail, by registered or certified mail postage prepaid, or upon actual receipt if given by any other method, addressed to each holder of such record at his address appearing on the books of the Corporation.

C. Rights, Preferences and Restrictions of Series A Preferred Stock

1. Preference on Liquidation

(a) Preference Price. For purposes hereof, the "Original Purchase Price of the Series A Preferred Stock" is \$0.81 per share. The "Series A Preference Price" is the Original Purchase Price of the Series A Stock (as appropriately adjusted for stock splits, stock dividends on Series A Preferred Stock, stock combinations and stock reclassifications and the

like), plus all declared and unpaid dividends with respect thereto, calculated at the time of a distribution made in accordance with section D.1(b) below.

(b) Distribution Upon Liquidation. In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of the outstanding shares of Series A Preferred Stock shall be entitled to be paid out of the assets of this Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, *pari passu* with any such payment made to holders of the Series B-C Preferred Stock, before any payment is made in respect of the outstanding shares of Common Stock, the Series A Preference Price. After distribution of the Series A Preference Price to the holders of the outstanding shares of Series A Preferred Stock, the holders of the outstanding shares of Common Stock shall be entitled to an amount per share equal to the Series A Preference Price paid to the holders of the outstanding shares of Series A Preferred Stock. Thereafter, any remaining assets of this Corporation shall be distributed pro rata among the holders of the outstanding shares of Common Stock and Series A Preferred Stock based on the number of shares of Common Stock into which outstanding shares of Series A Preferred Stock are convertible pursuant to this Certificate of Incorporation as of the date of distribution.

(c) Partial Payment. If, upon any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the assets of this Corporation available for distribution to its stockholders shall be insufficient to pay the full Series A Preference Price required to be paid to the holders of the outstanding shares of Series A Preferred Stock plus the full Series B Preference Price and full Series C Preference Price required to be paid to the holders of the outstanding shares of Series B Preferred Stock and Series C Preferred Stock, respectively, then all of the assets of this Corporation legally available for distribution to the holders of equity securities shall be distributed ratably among the Series A Preferred Stockholders *pari passu* with the Series B-C Preferred Stockholders in proportion to the full amounts to which they would otherwise be respectively entitled. If liquidation preferences below the full Preference Price are to be paid, the holders of the outstanding shares of each Series of Preferred Stock shall each be paid the same liquidation preference amount per share as is paid to every other holder of that Series.

(d) Certain Transactions. The sale, transfer or other conveyance of all or substantially all of the assets of this Corporation, or the sale, transfer or other conveyance of a majority of the outstanding voting securities of this Corporation (on a fully diluted bases) in any transaction or related series of transactions whether by merger or consolidation or otherwise, shall not be deemed to be a liquidation, dissolution or winding up of the Corporation, as those terms are used in this Section of this Certificate of Incorporation, unless so elected to be treated as such by a majority of the Corporation's Board of Directors.

(e) Consent to Certain Distributions. Each holder of outstanding shares of Series A Preferred Stock, shall by virtue of its acceptance of a stock certificate evidencing such shares, be treated as having consented to distributions made by this Corporation for the repurchase of shares of Common Stock from directors or employees of, or consultants or advisers to, this Corporation upon the termination of employment by, or service to, this Corporation or any subsidiary of this Corporation or otherwise, if such repurchase is made in accordance with an agreement authorizing the right of said repurchase.

(f) Liquidation Adjustment. Notwithstanding anything to the contrary in this Certificate of Incorporation, each Preference Price shall be adjusted downwards upon the receipt by the holder of Preferred Stock of any non-cash dividends or distributions comprised solely of stock of any of this Corporation's subsidiaries (other than distributions of this Corporation's capital stock). Such adjustment shall be made by subtracting from the Preference Price the per share amount of the "cash value" of any such non-cash dividends or distributions made on the respective series of Preferred Stock at any time since the issuance of such series. The "cash value" shall be determined in good faith by this Corporation's Board of Directors in its sole discretion, or, if the distribution is a stock dividend (other than this Corporation's capital stock) whereby within one hundred and eighty (180) days after such distribution and prior to a "liquidating" event such company's stock is publicly traded, then the initial public offering price of such company's stock shall be the "cash value" whether or not the distributed stock is itself traded.

2. Conversion. The holders of the outstanding shares of Series A Preferred Stock shall have the conversion rights set forth below (the "Conversion Rights").

(a) Right to Convert. Upon (i) the closing of a firm underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of shares of Common Stock for the account of the Corporation (other than a registration statement effected solely to implement an employee benefit plan, a transaction in which Rule 145 of the Securities and Exchange Commission is applicable or any other form or type of registration in which the shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock cannot be included pursuant to the Securities and Exchange Commission rules or practices) resulting in aggregate proceeds to the Corporation (before the payment of underwriting discounts and commissions and the expense of the offering) in excess of Ten Million Dollars (\$10,000,000); or (ii) a merger or consolidation with or into another corporation or a sale of all or substantially all of the Corporation's properties and assets in which the aggregate gross cash proceeds received by the Corporation is at least Ten Million Dollars (\$10,000,000) in cash or marketable securities, then the Board of Directors shall take all actions appropriate to convert each share of Series A Preferred Stock into Common Stock.

(b) Upon the occurrence of an event specified above, the outstanding shares of Series A Preferred Stock shall be converted into shares of Common Stock, whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares are either delivered to the Corporation or its transfer agent as provided below or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation indemnifying the Corporation from any loss incurred by it in connection with the issuance of such certificate. Upon the occurrence of such conversion of the outstanding shares of Series A Preferred Stock, the holders of the outstanding shares of Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or to any transfer agent for the shares of Series A Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered promptly to such holder, at such office and in its name as shown on such surrendered certificate

or certificates, a certificate or certificates for the number of shares of Common Stock into which the surrendered shares of Series A Preferred Stock of such holder were convertible on the date on which such conversion occurred, and the Corporation shall promptly pay in cash all declared but unpaid dividends on the shares of Series A Preferred Stock so converted.

(c) Price. Each share of Series A Preferred Stock, when converted, shall be converted into the number of shares of Common Stock that is equal to the quotient obtained by dividing (A) Eighty-One Cents (\$0.81) for each share of Series A Preferred Stock, by (B) the Series A conversion Price, immediately prior to the time of such conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of Series A Preferred Stock shall be Eighty-One Cents (\$0.81) (as adjusted from time to time as herein provided, the "Series A Conversion Price").

(d) Mechanics of Conversion. At the occurrence of one of the events specified under Section 2(a) above, the Board of Directors shall, if necessary, take such action to ensure that the Certificate of Incorporation is amended to increase the number of authorized shares of Common Stock, which may include the convocation of a general meeting of stockholders. The Board of Directors shall thereafter adopt resolutions to effectuate the conversion of Series A Preferred Stock into Common Stock at the Series A Conversion Price, as adjusted from time to time. Thereafter, the holders of shares of Series A Preferred Stock shall have the right to receive new share certificates representing shares of Common Stock in accordance with the procedures as described under Section 2(b) above.

(e) Adjustment for Stock Splits and Combinations. If this Corporation at any time or from time to time after August 1, 1997, effects a division of the outstanding shares of Common Stock, then the Series A Conversion Price shall be proportionately decreased and, conversely, if this Corporation at any time, or from time to time, after August 1, 1997, combines the outstanding shares of Common Stock, then the Series A Conversion Price shall be proportionately increased. Any adjustment under this Section shall be effective on the close of business on the date such division or combination becomes effective.

(f) Adjustments for Other Dividends and Distributions. If this Corporation at any time or from time to time after August 1, 1997, fixes a record date for the determination of holders of shares of Common Stock entitled to receive a dividend or other distribution in the form of securities of this Corporation other than shares of Common Stock or rights or options for the purchase of, or securities convertible into, Common Stock, then in each such event provision shall be made so that the holders of outstanding shares of Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of this Corporation which they would have received had their respective shares of Series A Preferred Stock been converted into shares of Common Stock on the date one day before such event and had such holders thereafter, from the date of such event to and including the actual date of conversion of their shares, retained such securities, subject to all other adjustments called for during such period under this Section with respect to the rights of the holders of the outstanding shares of Series A Preferred Stock.

(g) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after August 1, 1997, the number of shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock, is changed into the same or a different number of shares of any other class or classes of Stock or other securities, whether by recapitalization, reclassification or otherwise (other than a recapitalization, division or combination of shares or a stock dividend, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section, then in any such event each holder of outstanding shares of Series A Preferred Stock shall have the right thereafter to convert such shares of Series A Preferred Stock into the same kind and amount of Stock and other securities receivable upon such recapitalization, reclassification or other change, as the maximum number of shares of Common Stock into which such shares of Series A Preferred Stock, could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein.

(h) Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after August 1, 1997, there is a capital reorganization of the Common Stock (other than a recapitalization, division, combination, reclassification or exchange of shares provided for elsewhere in this Section or a merger or consolidation of this Corporation into or with another corporation or a sale of all or substantially all of this Corporation's properties and assets to any other person), then, as part of such capital reorganization, merger, consolidation or sale, provision shall be made so that the holders of outstanding shares of Series A Preferred Stock shall thereafter receive upon conversion thereof the number of shares of Stock or other securities or property of this Corporation, or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of the number of shares of Common Stock into which their shares of Series A Preferred Stock were convertible would have been entitled on such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section with respect to the rights of the holders of the outstanding shares of Series A Preferred Stock after such capital reorganization, merger, consolidation, or sale. The provisions of this Section (including adjustment of the Series A Conversion Price and the number of shares into which the outstanding shares of Series A Preferred Stock may be converted) shall be applicable after that event and be as nearly equivalent to such Conversion Price and number of shares as may be practicable.

D. Provisions Applicable to Series B-C Preferred Stock

1. Liquidation Rights.

(a) Preference Price. For purposes hereof, the Original Purchase Price of the Series B Preferred Stock is \$1.73 per share and the Original Purchase Price of the Series C Preferred Stock is the price per share paid by the initial purchasers of such Series C Preferred Stock in the initial offering thereof. The "Series B Preference Price" is the Original Purchase Price of the Series B Preferred Stock (as appropriately adjusted for stock splits, stock dividends on Series B Preferred Stock, stock combinations and stock reclassifications and the like), plus all declared and unpaid dividends with respect thereto, calculated at the time of a distribution made in accordance with section D.1(b) below. The "Series C Preference Price" is the Original Purchase Price of the Series C Preferred Stock (as appropriately adjusted for stock

splits, stock dividends on Series C Preferred Stock, stock combinations and stock reclassifications and the like), plus all declared and unpaid dividends with respect thereto, calculated at the time of a distribution made in accordance with section D.1(b) below.

(b) Distribution Upon Liquidation. In the event of the liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the Series B-C Preferred Stockholders will be entitled to receive out of the funds and other assets of the Corporation legally available for distribution to stockholders, for each share of the Series B-C Preferred Stock then held by them, *pari passu* with the holders of the Series A Preferred Stock, prior and in preference to any distribution to the Common Stockholders (i) in the case of the Series B Preferred Stockholders, the Series B Preference Price and (ii) in the case of the Series C Preferred Stockholders, the Series C Preference Price.

(c) Partial Payment. If upon the liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the funds and other assets of the Corporation legally available for distribution among the Series A Preferred Stockholders and the Series B-C Preferred Stockholders are insufficient to permit the payment to such Stockholders of the full Series A Preference Price, Series B Preference Price and Series C Preference Price, respectively, then the entire funds and other assets of the Corporation legally available for distribution will be distributed in accordance with section D.1(b) above.

(d) A liquidation, dissolution or winding up for the purposes of this Section D.1 includes a sale of all or substantially all of the assets of the Corporation and a merger, consolidation or reorganization of the Corporation with or into any other corporation or other entity where the stockholders of the Corporation immediately prior to such event do not retain more than fifty percent (50%) voting interest in the successor corporation or entity (collectively, an "Asset Sale or Merger"), *provided, however*, that an Asset Sale or Merger shall not be deemed to be a liquidation if a majority of the holders of the Series B Preferred Stock and a majority of the holders of the Series C Preferred Stock, each such series voting as a separate class, vote to waive this provision.

2. Conversion Rights. The Series B-C Preferred Stockholders shall have conversion rights as follows (the "Conversion Rights"):

(a) Optional Conversion. Each of the Series B Preferred Stockholders and the Series C Preferred Stockholders may, at any time, and from time to time, convert any or all of such Stockholder's shares of Series B-C Preferred Stock into fully-paid and non-assessable shares of Common Stock at the conversion ratio set forth in section 2(c) below, as adjusted from time to time in accordance with the provisions of this section 2.

(b) Automatic Conversion. Each share of Series B-C Preferred Stock shall automatically be converted into shares of Common Stock immediately upon the closing of the Corporation's sale of its Common Stock in an underwritten firm commitment public offering registered under the Securities Act of 1933, as amended (other than a registration on Form S-8, Form S-4 or comparable forms), which results in aggregate cash proceeds (net of underwriter commissions and offering expenses) to the Corporation of not less than \$20,000,000 and which has a public offering price of not less than three (3) times the Original Purchase Price of the

Series C Preferred Stock per share (as appropriately adjusted for stock splits, stock dividends on the Series C Preferred Stock, stock combinations and stock reclassifications and the like). Each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock immediately upon the vote or written consent of the holders of fifty-one percent (51%) of the outstanding shares of Series B Preferred Stock, voting as a single class. Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock immediately upon the vote or written consent of the holders of fifty-one percent (51%) of the outstanding shares of Series C Preferred Stock, voting as a single class.

(c) Conversion Ratio.

(i) Upon conversion, each share of Series B-C Preferred Stock shall be converted into the number of shares of Common Stock that results from dividing the Original Purchase Price for that series of Preferred Stock by its Conversion Price in effect at the time of conversion.

(ii) The initial Conversion Price for each series of the Series B-C Preferred Stock will be the Original Purchase Price for such series, so that prior to any adjustment from time to time under certain instances as hereinafter provided, each share of Series B-C Preferred Stock shall be convertible into one share of Common Stock.

(iii) In the case of optional conversion, before any holder of Series B-C Preferred Stock shall be entitled to convert the same into Common Stock, such holder shall surrender the certificates or certificates therefor (or an affidavit certifying that such certificates has been mutilated or apparently lost, destroyed or stolen along with an appropriate indemnity), duly endorsed, to the office of the Corporation or any transfer agent for such Series B-C Preferred Stock and shall give written notice to the Corporation at such office that it elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver to such holder, or to its nominee or nominees, certificates for the number of full shares of Common Stock to which it shall be entitled, together with cash in lieu of any fraction of a share as hereinafter provided, and, if less than all of the shares represented by such certificates are converted, a certificate representing the shares of Series B-C Preferred Stock not converted. Such conversion shall be deemed to have been made as of the date of such surrender of the certificate for the stock to be converted, and the person or persons entitled to receive the Common Stock deliverable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on such date. If the conversion is in connection with an offer of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering shares of Series B-C Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock deliverable upon such conversion of the Series B-C Preferred Stock shall not be deemed to have converted such Series B-C Preferred Stock until effective with the closing of such sale of securities.

(iv) In the case of automatic conversion, on and after the related conversion event, notwithstanding that any certificate for such shares of Series B-C Preferred Stock subject to such conversion shall not have been surrendered for conversion, the shares of Series B-C Preferred Stock evidenced thereby shall be deemed to be no longer outstanding, and

all rights with respect thereto shall forthwith cease and terminate, except only the rights of the holder (A) to receive the shares of Common Stock to which such holder shall be entitled upon conversion thereof and to be deemed for all purposes as the record holder of such Common Stock as of the automatic conversion date, and (B) to receive the amount of cash payable in respect of any fractional share of Common Stock to which such holder shall be entitled.

(d) Adjustments to Conversion Price. The Conversion Price in effect from time to time shall be subject to adjustment in certain cases as follows:

(i) Adjustment for Subdivisions or Combinations of Common Stock.

In the event the Corporation at any time or from time to time after the effective date of the initial sale of Series B Preferred Stock (the "Original Issue Date") effects a stock split, stock dividend, reclassification, subdivision or combination of its outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of its outstanding Series B-C Preferred Stock, then the existing Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock, as the case may be, will be decreased or increased proportionately.

(ii) Adjustment for Subdivisions or Combinations of Preferred Stock.

In the event the Corporation at any time or from time to time after the Original Issue Date effects a stock split, stock dividend, reclassification, subdivision or combination of its outstanding Preferred Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of its outstanding Common Stock, then the existing Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock, as the case may be, will be decreased or increased proportionately.

(iii) Adjustment for Dividends, Distributions and Common Stock

Equivalents. In the event the Corporation at any time or from time to time after the Original Issue Date makes or issues, or fixes a record date for the determination of holders of Common Stock (but not holders of Series B-C Preferred Stock) entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights, including options and warrants, convertible into, exchangeable for or entitling the holder thereof to acquire or receive additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration for such Common Stock Equivalents or the additional shares of Common Stock, for the purpose of protecting the Series B-C Preferred Stockholders from any dilution in connection therewith, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto, the determination of such maximum being without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents will be deemed to be issued and outstanding as of the time of such issuance or, in the event such a record date has been fixed, as of the close of business on such record date. In each such event, the then existing Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock, as the case may be, will be decreased as of the time of such issuance or, in the event such a record date has been fixed, as of the close of business on such record date, by

multiplying the Conversion Price for the Series B Preferred Stock or for the Series C Preferred Stock, as the case may be, in each case by a fraction:

(A) the numerator of which will be the total number of shares of Common Stock and Common Stock Equivalents issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(B) the denominator of which will be the total number of shares of Common Stock and Common Stock Equivalents issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents; provided, however, if such record date has been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock each will be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock each will be adjusted pursuant to this section 2(d) as of the time of actual payment of such dividends or distribution.

(iv) Adjustments for Recapitalizations, etc. If at any time or from time to time there shall be a recapitalization, reorganization or reclassification of the Common Stock (other than a subdivision, combination or merger or a sale of assets transaction provided for elsewhere in this section 2(d)) or payment of a dividend or distribution (other than a cash dividend, or dividends and distributions as to which subparagraph (ii) of this section 2(d) applies), provision shall be made so that the Series B-C Preferred Stockholders shall thereafter be entitled to receive upon conversion of such Series B-C Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which it would have received had it converted its shares of Series B Preferred Stock or Series C Preferred Stock, as the case may be, into Common Stock immediately prior to such recapitalization, reorganization, reclassification, dividend or distribution. In any such case, appropriate adjustment shall be made in the application of the provisions of this section 2(d) with respect to the rights of the Series B-C Preferred Stockholders after the recapitalization, reorganization or reclassification to the end that the provisions of this section 2(d) (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of shares of Series B-C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(v) Adjustments for Additional Shares Issued

(A) If at any time after the Original Issue Date, the Corporation issues or sells any Additional Shares (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series B Preferred Stock or the Series C Preferred Stock, respectively in

each such case as in effect on the date of and immediately prior to such issue, then and in each such case, the Conversion Price for the applicable series of Preferred Stock will be reduced to an amount (calculated to the nearest tenth of a cent) determined by multiplying such applicable Conversion Price by a fraction:

(1) the numerator of which will be the number of shares of Common Stock and Common Stock Equivalents outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for such issue would purchase at such applicable Conversion Price, and

(2) the denominator of which will be the number of shares of Common Stock and Common Stock Equivalents outstanding immediately after the Additional Shares proposed to be issued or sold are issued or sold; *provided that* such fraction will in no event be greater than one (1).

For purposes of this subsection 2(d)(v), the shares of Common Stock issuable upon conversion of Series B-C Preferred Stock (and other shares of convertible preferred stock) will be included in both the numerator and denominator described above based on the number of shares of Common Stock issuable in exchange therefor without giving effect to this subsection 2(d)(v) (and comparable adjustments applicable to other shares of convertible preferred stock).

(B) For the purposes of any adjustment of a Conversion Price pursuant to this subsection 2(d)(v), the following provisions shall be applicable:

(1) In the case of the issuance of Additional Shares for cash, the consideration shall be deemed to be the amount of cash paid therefor without deducting any underwriting or similar discounts, commissions or other compensation paid, allowed or incurred by the Corporation in connection with the issuance and sale thereof.

(2) In the case of the issuance of Additional Shares for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors of the Corporation, *provided that* if, at the time of such determination, the Corporation's Common Stock is traded in the over-the-counter market or on a national securities exchange, such fair market value as determined by the Board of Directors of the Corporation shall not exceed the aggregate "Current Market Price" (as defined below) of the shares of Common Stock being issued.

(3) In the case of the issuance of Additional Shares together with other stock or securities or other assets of the Corporation for a consideration which covers both, such consideration so received may be allocated to the Additional Shares on such basis as may be reasonably determined in good faith by the Board of Directors.

(4) The term "Additional Shares" shall mean shares of Common Stock and Common Stock Equivalents (other than Excluded Stock), *provided that* with respect to the latter:

a) the aggregate maximum number of shares of Common Stock deliverable upon exercise, conversion or exchange of such Common Stock Equivalents shall be deemed to have been issued at the time such Common Stock Equivalents were issued and for a consideration equal to the consideration (determined in the manner provided in subdivisions (1), (2) and (3) above), if any, received by the Corporation upon the issuance of such Common Stock Equivalents plus the minimum aggregate amount of additional consideration payable to the Corporation on exercise, conversion or exchange of such Common Stock Equivalents for the aggregate maximum number of shares of Common Stock covered thereby, and no further adjustment of the Conversion Price shall be made as a result of the actual issuance of shares of Common Stock on the exercise or conversion of any such Common Stock Equivalents;

b) on any change in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of any Common Stock Equivalents, or on any change in the minimum purchase price of such Common Stock Equivalents, other than a change resulting from the antidilution provisions set forth in the instruments defining the rights thereof, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon (x) the issuance of such Common Stock Equivalents not exercised, converted or exchanged prior to such change, as the case may be, been made upon the basis of such change or (y) the Common Stock Equivalents not exercised, converted or exchanged prior to such change, as the case may be, been made upon the basis of such change;

c) on the expiration of any such options or rights represented in any Common Stock Equivalents, the termination of any such rights to exercise, convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price shall forthwith be readjusted to such conversion price as would have obtained had the adjustment made upon the issuance of such Common Stock Equivalents been made upon the basis of the issuance of only the

number of shares of Common Stock actually issued upon the exercise, conversion or exchange of such Common Stock Equivalents.

(5) Notwithstanding anything in this subsection 2(d)(v) to the contrary, the Conversion Price shall not be adjusted upon the issuance by the Corporation of any of the following securities ("Excluded Stock"), which in each case are approved by the Board of Directors of the Corporation: (i) Compensatory Shares (including options permitting the purchase thereof) pursuant to stock purchase or stock option plans or similar arrangements; (ii) securities issued in connection with acquisitions, corporate partnering or strategic transactions; (iii) shares of Common Stock issued upon conversion of any shares of Series B-C Preferred Stock; (iv) shares issued in an underwritten firm commitment public offering in which the Series B-C Preferred Stock is converted into Common Stock; (v) securities issued in connection with stock dividends, splits, combinations, recapitalizations and similar events described in subparagraphs (i), (ii) or (iii) of this section 2(d); or (vi) shares of Common Stock or Common Stock Equivalents issued to any bank, financial institution, equipment lessor or similar financing sources in bona fide commercial credit arrangements, equipment financings and similar transactions primarily for non-equity capital raising purposes.

(6) For the purpose of any computation pursuant to this section 2(d), the "Current Market Price" at any date of one share of Common Stock shall be deemed to be the average of the last sale prices for the twenty (20) prior trading days on any public trading market for the Common Stock, *provided that* if the Common Stock is not traded on a public trading market, Current Market Price shall be determined in good faith by the Board of Directors.

(c) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to section 2(d) above, the Corporation, at its expense promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each Series B-C Preferred Stockholder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall furnish or cause to be furnished to such Stockholder a certificate setting forth (i) such adjustment and readjustment, (ii) the current Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series B Preferred Stock or Series C Preferred Stock.

(f) Reservation of Stock Issuable Upon Conversion. The Corporation at all times will reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Series B-C Preferred Stock such number of its shares of Common Stock as from time to time will be sufficient to

effect the conversion of all then outstanding shares of Series B-C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock is not sufficient to effect the conversion of all then outstanding shares of Series B-C Preferred Stock, in addition to such other remedies as may be available to the Series B-C Preferred Stockholders for such failure, the Corporation will take such corporate action as, in the opinion of its counsel, may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as will be sufficient for such purpose.

3. Protective Provisions.

(a) The Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of over fifty percent (50%) of the then outstanding shares of Series B Preferred Stock and the holders of over fifty percent (50%) of the then outstanding shares of Series C Preferred Stock, each such series voting separately as a separate class:

(i) apply any of the Corporation's assets to the redemption, retirement, purchase or acquisition of any outstanding shares of Common Stock or Preferred Stock other than at par value except (i) pursuant to agreements that permit the Corporation to repurchase at cost Compensatory Stock upon the termination of employment, director or consulting services to the Corporation or (ii) in exercise of the Corporation's right of first refusal or similar right with respect to a proposed transfer of capital stock, pursuant to stock option, incentive stock option, and similar agreements approved by the Board;

(ii) pay or declare any dividend on the Common Stock (other than dividends payable solely in shares of capital stock of the Corporation);

(iii) issue securities to employees, officers or directors in excess of the number of such securities that have been reserved for such issuance as of the date of filing of this Amended and Restated Certificate, unless approved by a majority of the disinterested directors of the Corporation including the director elected by the Series B Preferred Stockholders and the director elected by the Series C Preferred Stockholders;

(iv) enter into any transactions, including loans, with any officer or director of the Corporation or to or with their affiliates or families, unless approved by a majority of the disinterested directors of the Corporation including the director elected by the Series B Preferred Stockholders and the director elected by the Series C Preferred Stockholders;

(v) take any action to voluntarily dissolve or liquidate the Corporation;

(b) Except as otherwise provided in these Articles or as may be required by law, so long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of over fifty percent (50%) of the then outstanding shares of Series B Preferred Stock voting separately as a separate class:

(i) amend, repeal, alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock or increase or decrease the authorized number of Series B Shares;

(ii) authorize, create (by reclassifications or otherwise) or issue any new class or series of shares having rights, preferences or privileges senior to or on parity with the Series B Preferred Stock, *provided that* such approval shall not be required for the Company to issue its Series C Stock with the rights, preferences and privileges provided herein;

(iii) enter into any Asset Sale or Merger unless such transaction results in a distribution to the Series B Preferred Stockholders in an amount equal to at least three (3) times the Original Purchase Price paid by the Series B Preferred Stockholders, in cash or securities; or

(iv) enter into any agreement that would impair the Company's ability to perform its obligations under that certain Series B Preferred Stock Purchase Agreement among the Company and certain Series B Preferred Stockholders.

(c) Except as otherwise provided in these Articles or as may be required by law, so long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of over fifty percent (50%) of the then outstanding shares of Series C Preferred Stock voting separately as a separate class:

(i) amend, repeal, alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock or increase or decrease the authorized number of Series C Shares;

(ii) authorize, create (by reclassifications or otherwise) or issue any new class or series of shares having rights, preferences or privileges senior to or on parity with the Series C Preferred Stock;

(iii) enter into any Asset Sale or Merger unless such transaction results in a distribution to the Series C Preferred Stockholders in an amount equal to at least three (3) times the Original Purchase Price paid by the Series C Preferred Stockholders, in cash or securities; or

(iv) enter into any agreement that would impair the Company's ability to perform its obligations under that certain Series C Preferred Stock Purchase Agreement among the Company, OffRoad Securities, Inc., and the Series C Preferred Stockholders.

4. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to section 2 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

ARTICLE V

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

A. To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

B. The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she, his or her testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

* * *

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware. A majority of the outstanding shares of Common Stock and Preferred Stock approved this Amended and Restated Certificate of Incorporation by written consent in accordance with Section 228 of the General Corporation Law of the State of Delaware and written notice of such was given by the Corporation in accordance with said Section 228.

Executed at Berkeley, California on this 10 day of July, 2000.

/s/ Philip J. Gioia

Philip J. Gioia
President and Chief Executive Officer



UNITED STATES
PATENT AND
TRADEMARK OFFICE

DECEMBER 31, 2001

PTAS

MARGER JOHNSON & MCCOLLOM , P.C.
ALEXANDER C. JOHNSON, JR.
1030 S.W. MORRISON STREET
PORTLAND, OR 97205

Chief Financial Officer and Chief Administrative Officer
Washington, DC 20231
www.uspto.gov



101882566A

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 10/15/2001

REEL/FRAME: 012263/0077
NUMBER OF PAGES: 4

BRIEF: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
VERISTAR CORPORATION

DOC DATE: 08/16/2001

ASSIGNEE:
INDIVOS CORPORATION
155 GRAND AVENUE
SUITE 1050
OAKLAND, CALIFORNIA 94612

SERIAL NUMBER: 08442895
PATENT NUMBER: 5613012

FILING DATE: 05/17/1995
ISSUE DATE: 03/18/1997

SERIAL NUMBER: 08345523
PATENT NUMBER: 5615277

FILING DATE: 11/28/1994
ISSUE DATE: 03/25/1997

SERIAL NUMBER: 08739313
PATENT NUMBER: 5737439

FILING DATE: 10/29/1996
ISSUE DATE: 04/07/1998

SERIAL NUMBER: 08722629
PATENT NUMBER: 5764789

FILING DATE: 09/27/1996
ISSUE DATE: 06/09/1998

SERIAL NUMBER: 08818872
PATENT NUMBER: 5802199

FILING DATE: 03/17/1997
ISSUE DATE: 09/01/1998

SERIAL NUMBER: 08820008
PATENT NUMBER: 5805719

FILING DATE: 03/18/1997
ISSUE DATE: 09/08/1998

SERIAL NUMBER: 08687251
PATENT NUMBER: 5838812

FILING DATE: 07/25/1996
ISSUE DATE: 11/17/1998

SERIAL NUMBER: 08705399
PATENT NUMBER: 5870723

FILING DATE: 08/29/1996
ISSUE DATE: 02/09/1999

SERIAL NUMBER: 08902151
PATENT NUMBER: 5982914

FILING DATE: 07/29/1997
ISSUE DATE: 11/09/1999

SERIAL NUMBER: 09244784
PATENT NUMBER: 6012039

FILING DATE: 02/05/1999
ISSUE DATE: 01/04/2000

SERIAL NUMBER: 09098318
PATENT NUMBER: 6131464

FILING DATE: 06/16/1998
ISSUE DATE: 10/17/2000

SERIAL NUMBER: 09245501
PATENT NUMBER: 6154879

FILING DATE: 02/05/1999
ISSUE DATE: 11/28/2000

SERIAL NUMBER: 09243208
PATENT NUMBER: 6192142

FILING DATE: 02/02/1999
ISSUE DATE: 02/20/2001

SERIAL NUMBER: 09239595
PATENT NUMBER: 6230148

FILING DATE: 01/29/1999
ISSUE DATE: 05/08/2001

SERIAL NUMBER: 09183215
PATENT NUMBER:

FILING DATE: 10/30/1998
ISSUE DATE:

SERIAL NUMBER: 09330253
PATENT NUMBER:

FILING DATE: 06/10/1999
ISSUE DATE:

SERIAL NUMBER: 09239570
PATENT NUMBER: 6269348

FILING DATE: 01/29/1999
ISSUE DATE: 07/31/2001

SERIAL NUMBER: 09357718
PATENT NUMBER:

FILING DATE: 07/20/1999
ISSUE DATE:

SERIAL NUMBER: 09398914
PATENT NUMBER:

FILING DATE: 09/16/1999
ISSUE DATE:

SERIAL NUMBER: 09441107
PATENT NUMBER:

FILING DATE: 11/16/1999
ISSUE DATE:

SERIAL NUMBER: 60208680
PATENT NUMBER:

FILING DATE: 05/31/2000
ISSUE DATE:

SERIAL NUMBER: 29097104
PATENT NUMBER: D415611

FILING DATE: 11/30/1998
ISSUE DATE: 10/26/1999

SERIAL NUMBER: 08442895
PATENT NUMBER: 5613012

FILING DATE: 05/17/1995
ISSUE DATE: 03/18/1997

SERIAL NUMBER: 08345523
PATENT NUMBER: 5615277

FILING DATE: 11/28/1994
ISSUE DATE: 03/25/1997

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PATENT NUMBER: 5737439

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ISSUE DATE: 04/07/1998

SERIAL NUMBER: 08722629
PATENT NUMBER: 5764789

FILING DATE: 09/27/1996
ISSUE DATE: 06/09/1998

SERIAL NUMBER: 08818872
PATENT NUMBER: 5802199

FILING DATE: 03/17/1997
ISSUE DATE: 09/01/1998

SERIAL NUMBER: 08820008
PATENT NUMBER: 5805719

FILING DATE: 03/18/1997
ISSUE DATE: 09/08/1998

SERIAL NUMBER: 08687251
PATENT NUMBER: 5838812

FILING DATE: 07/25/1996
ISSUE DATE: 11/17/1998

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PATENT NUMBER: 5870723

FILING DATE: 08/29/1996
ISSUE DATE: 02/09/1999

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ISSUE DATE: 11/09/1999

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SERIAL NUMBER: 09098318
PATENT NUMBER: 6131464

FILING DATE: 06/16/1998
ISSUE DATE: 10/17/2000

SERIAL NUMBER: 09245501
PATENT NUMBER: 6154879

FILING DATE: 02/05/1999
ISSUE DATE: 11/28/2000

SERIAL NUMBER: 09243208
PATENT NUMBER: 6192142

FILING DATE: 02/02/1999
ISSUE DATE: 02/20/2001

SERIAL NUMBER: 09239595
PATENT NUMBER: 6230148

FILING DATE: 01/29/1999
ISSUE DATE: 05/08/2001

SERIAL NUMBER: 29097014
PATENT NUMBER: D425873

FILING DATE: 11/25/1998
ISSUE DATE: 05/30/2000

SHARON LATIMER, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS



UNITED STATES
PATENT AND
TRADEMARK OFFICE

Chief Financial Officer and Chief Administrative Officer
Washington, DC 20231
www.uspto.gov

AUTHORIZATION TO CHARGE ADDITIONAL FEES TO DEPOSIT



101882566B

DECEMBER 31, 2001

TO: OFFICE OF FINANCE
FROM: ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS
SUBJECT: DEPOSIT ACCOUNT CHARGE(S)

CHARGE THE DEPOSIT ACCOUNT LISTED BELOW ADDITIONAL FEE(S) AS INDICATED BELOW. AUTHORIZATION TO CHARGE ADDITIONAL FEES HAS BEEN PROVIDED PER THE ATTACHED COVER SHEET, OR BY DIRECT CONTACT WITH THE CUSTOMER.

DEPOSIT ACCOUNT NUMBER: 131703
PROPERTY NUMBER: 08442895

RECORDING FEES:

FEE CODE: 581 AMOUNT: 600

IF YOU HAVE ANY QUESTIONS REGARDING THIS NOTICE, YOU MAY CONTACT THE INDIVIDUAL WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723.

SHARON LATIMER, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

TRADEMARK SERVICE FEES:	FEE CODE:
RECORDING FIRST MARK	481
RECORDATION SECOND AND SUBSEQUENT MARK IN SAME DOCUMENT	482
LABOR CHARGES FOR SERVICES PER HOURS OR FRACTION THEREOF	484
UNSPECIFIED OTHER SERVICES	485

PATENT SERVICE FEES:

RECORDING EACH PATENT ASSIGNMENT, AGREEMENT, OTHER PAPER, PER PROPERTY	581
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LABOR CHARGES FOR SERVICES PER HOUR	584
(\$30) OR FRACTION THEREOF	
UNSPECIFIED OTHER SERVICES	585

10-1561

10-23-2001

PATENT APPLICATION
Attorney's Do. No. 8514-1

IN THE U

101882566

MARK OFFICE

BOX ASSIGNMENT

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest:

Veristar Corporation

2. Name and address of party(ies) receiving an interest:

Indivos Corporation
155 Grand Avenue, Suite 1050
Oakland, California 94612

3. Description of the interest conveyed:

☐ Assignment ☒ Change of Name ☐ Security Agreement ☐ Merger

Date of execution of attached document: August 16, 2001

4. Application number(s) or patent number(s). Additional sheet attached? Yes ___ No
- X

A. Patent Application No. B. Filed C. Patent No. D. Issued

08/442,895	5-17-95	5,613,012	3-18-97
08/345,523	11-28-94	5,615,277	3-25-97
08/739,313	10-29-96	5,737,439	4-7-98
08/722,629	9-27-96	5,764,789	6-9-98
08/818,872	3-17-97	5,802,199	9-1-98
08/820,008	3-18-97	5,805,719	9-8-98
08/687,251	7-25-96	5,838,812	11-17-98
08/705,399	8-29-96	5,870,723	2-9-99
08/902,151	7-29-97	5,982,914	11-9-99
09/244,784	2-5-99	6,012,039	1-4-00
09/098,318	6-16-98	6,131,464	10-17-00
09/245,501	2-5-99	6,154,879	11-28-00
09/243,208	2-2-99	6,192,142	2-20-01
09/239,595	1-29-99	6,230,148	5-8-01
09/183,215	10-30-98		
09/330,253	6-10-99		
09/239,570	1-29-99		
09/357,718	7-20-99		
09/398,914	9-16-99		
09/441,107	11-16-99		
60/208,680	5-31-00		
29/097,014	11-25-98	D425,873	5-30-00

OCT 15 2001

I HEREBY CERTIFY THAT THIS COR-
RESPONDENCE IS BEING DEPOSITED
WITH THE UNITED STATES POSTAL
SERVICE AS FIRST CLASS MAIL IN AN
ENVELOPE ADDRESSED TO:COMMISSIONER OF PATENTS AND
TRADEMARKS, WASHINGTON D.C.
20231☐ ASSISTANT COMMISSIONER FOR
PATENTS, WASHINGTON D.C. 20231☐ ASSISTANT COMMISSIONER FOR
TRADEMARKS, 2980 CRYSTAL DRIVE,
ARLINGTON VA 22207-3511

ON: 10/23/2001

BY: [Signature]

10/23/2001 LMUELLER 00000006 08442895

01 FC:581

880.00 DP

EXHIBIT B
PAGE 6 OF 9

5. Name and address of party to whom correspondence concerning document should be mailed:

MARGER JOHNSON & McCOLLOM, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

6. Number of applications and patents involved: 22

7. Enclosed is our check for \$ 880.00

(Credit card payment form)

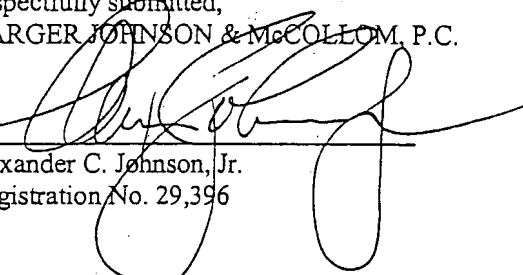
8. Any deficiency or overpayment should be charged or credited to deposit account number 13-1703.

9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Dated: October 9, 2001

10

Respectfully submitted,
MARGER JOHNSON & McCOLLOM, P.C.

By 
Alexander C. Johnson, Jr.
Registration No. 29,396

MARGER JOHNSON & McCOLLOM, P.C.
1030 SW Morrison Street
Portland, OR 97205
(503) 222-3613

Total number of pages comprising
cover sheet and attached assignment: 4

State of Delaware

Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "VERISTAR CORPORATION", CHANGING ITS NAME FROM "VERISTAR CORPORATION" TO "INDIVOS CORPORATION", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF AUGUST, A.D. 2001, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

2731001 8100

010402321

AUTHENTICATION: 1298842

DATE: 08-16-01

EXHIBIT B
PAGE 8 OF 9

CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
VERISTAR CORPORATION

Veristar Corporation, a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

I. The amendment to the Corporation's Amended and Restated Certificate of Incorporation set forth below has been adopted by the board of directors in accordance with the provisions of section 242 of the General Corporation Law of the State of Delaware.

II. Article I of the Corporation's Amended and Restated Certificate of Incorporation is amended to read in its entirety as follows:

"The name of this corporation is Indivox Corporation (the "Corporation")."

IN WITNESS WHEREOF, Veristar Corporation has caused this Certificate to be signed by Philip J. Gioia, its Chief Executive Officer, and Michael J. Biber, its Secretary, this 15 day of August, 2001.


Philip J. Gioia, Chief Executive Officer


Michael J. Biber, Secretary

corporation Indivox/Indivox name

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 08/15/2001
010402321 - 221501

EXHIBIT B
PAGE 9 OF 9

02-11-2003

Form PTO-1595 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings		U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office	
102354000			
To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.			
1. Name of conveying party(ies): Indivos Corporation Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		2. Name and address of receiving party(ies) Name: <u>Excel Innovations, Inc.</u> Internal Address: _____ Street Address: <u>708 Gravenstein Highway North</u> Suite <u>111</u> Tel: <u>(510) 390-0670</u> City: <u>Sebastopol</u> State: <u>CA</u> Zip: <u>95472</u> Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Nature of conveyance: <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____ Execution Date: <u>February 3, 2003</u>			
4. Application number(s) or patent number(s): If this document is being filed together with a new application, the execution date of the application is: _____ A. Patent Application No.(s) <u>09/398,914</u> <u>09/441,107</u> B. Patent No.(s) <u>5,613,012</u> <u>5,615,277</u> Additional numbers attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Otto Lee, Esq. - Reg. No. 37,871</u> <u>INTELLECTUAL PROPERTY LAW GROUP LLC</u> Internal Address: _____ Street Address: <u>12 South First Street, 12th Floor</u> Tel: <u>(408) 286-8933</u> City: <u>San Jose</u> , State: <u>CA</u> Zip: <u>95113</u>		6. Total number of applications and patents involved: <u>23</u> 7. Total fee (37 CFR 3.41).....\$ <u>920.00</u> <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account 8. Deposit account number: _____ (Attach duplicate copy of this page if paying by deposit account)	
DO NOT USE THIS SPACE			
9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. <u>Otto Lee, Esq.</u> Name of Person Signing <u></u> Signature <u>February 3, 2003</u> Date Total number of pages including cover sheet, attachments, and documents: <u>23</u>			

02/11/2003 6TOM11 00000043 09398914

01 FC:8021
02 FC:8023920.00 OP
120.00 OP

Mail documents to be recorded with required cover sheet information to:
 Commissioner of Patents & Trademarks, Box Assignments
 Washington, D.C. 20231

PATENT
 REEL: 13417 FRAME: 0941

EXHIBIT C
 PAGE 1 OF 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOX ASSIGNMENT

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest:

Indivos Corporation

2. Name and address of party(ies) receiving an interest:

Excel Innovations, Inc.
708 Gravenstein Highway North, Suite 111
Sebastopol, CA 95472

3. Description of the interest conveyed:

☒ Assignment ☐ Change of Name ☐ Security Agreement ☐ Merger

Date of execution of attached document: February 3, 2003

- 4 (CONT.) Application number(s) or patent number(s). Additional sheet attached? Yes ☐ No ☒

<u>A. Patent Application No.</u>	<u>B. Filed</u>	<u>C. Patent No.</u>	<u>D. Issued</u>
08/722,629	9-27-96	5,764,789	6-09-98
08/818,872	3-17-97	5,802,199	9-01-98
08/820,008	3-18-97	5,805,719	9-08-98
08/687,251	7-25-96	5,838,812	11-17-98
08/705,399	8-29-96	5,870,723	2-09-99
09/244,784	2-05-99	6,012,039	1-04-00
09/245,501	2-05-99	6,154,879	11-28-00
09/243,208	2-02-99	6,192,142	2-20-01
09/239,595	1-29-99	6,230,148	5-08-01
09/183,215	10-30-98	6,366,682	4-02-02
09/239,570	1-29-99	6,269,348	7-31-01
09/357,718	7-20-99	6,397,198	5-28-02
08/739,313	10-29-96	5,737,439	4-07-98
09/330,253	6-10-99	6,411,728	6-25-02
08/902,151	7-29-97	5,982,914	11-09-99
09/731,536	12-06-00		
09/639,948	8-17-00		
10/056,982	1-23-02		
09/215,058	12-17-98		

Best Available Copy

5. Name and address of party to whom correspondence concerning document should be mailed:

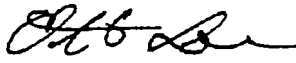
INTELLECTUAL PROPERTY LAW GROUP LLP
Otto Lee, Esq. - Registration No. 37,871
12 South First Street
12th Floor
San Jose, California 95113
Telephone: (408) 286-8933

6. Number of applications and patents involved: 23
7. Enclosed is our check for \$920.00 in patent assignment recording fees.
8. Any overpayment should be refunded to: Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, CA 95472
9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Dated: February 3, 2003

Respectfully submitted,
INTELLECTUAL PROPERTY LAW GROUP LLP

INTELLECTUAL PROPERTY LAW GROUP LLP
12 South First Street, 12th Floor
San Jose, CA 95113
Telephone: (408) 286-8933

By: 
Otto Lee, Esq.
Registration No. 37,871

Total number of pages comprising cover sheet and attached assignment and attached copy: 26

EXHIBIT C
PAGE 3 OF 4

PATENT
REEL: 13417 FRAME: 0943

ASSIGNMENT OF LETTERS PATENT

WHEREAS, Indivos Corporation, 635 Harrison Street, San Francisco, California, 94107, a corporation of the State of Delaware, hereinafter referred to as "ASSIGNOR", is owner of the invention as described and set forth in the below-identified United States Letters Patents, identified as:


Patent No.
 5,613,012
 5,615,277
 5,764,789
 5,737,439
 5,802,199
 5,805,719
 5,838,812
 5,870,723
 6,012,039
 6,154,879
 6,192,142
 6,230,148
 6,411,728
 5,982,914
 6,366,682
 6,269,348
 6,397,198

WHEREAS, Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, California 95472; a corporation of the State of California, hereinafter referred to as "ASSIGNEE", is desirous of acquiring the entire right, title and interest in the said invention and the Letters Patent which has been granted on the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for and in consideration of the sum of One Dollar (\$1.00) lawful money paid to Assignor by Assignee for each of the above-identified United States Letters Patent, receipt of which is hereby acknowledged, Assignor has sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee, and Assignee's successors and assigns, all right, title and interest in and to the said invention, any and all foreign applications related to said United States Letters Patent, and any Letters Patent which may hereafter be granted on the same invention in any and all countries throughout the world including any divisions, renewals, continuations in whole or in part, substitutions, conversions, reissues, prolongations or extensions thereof, the said interest to be held and enjoyed by said Assignee as fully and exclusively as it would have been held and enjoyed by said Assignor had this assignment and transfer not been made, to the full end and term of any Letters Patent.

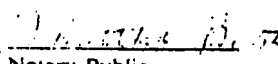
Assignor further agrees that he will, without charge to said Assignee, but at Assignee's expense, cooperate with Assignee in the prosecution of said application and/or applications, execute, verify, acknowledge and deliver all such further papers, including applications for Letters Patent and for the reissue thereof, and instruments of assignment and transfer thereof, and will perform such other acts as Assignee lawfully may request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereto in said Assignee, or Assignee's successors and assigns.

IN TESTIMONY WHEREOF, Assignor has hereunto signed his name to this assignment on the date indicated below.


 Ned Hoffman
 President Excel For
 Indivos Corporation

STATE of: California
 COUNTY of: San Francisco

On this 3rd day of February, in the year of 2003, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.


 Notary Public



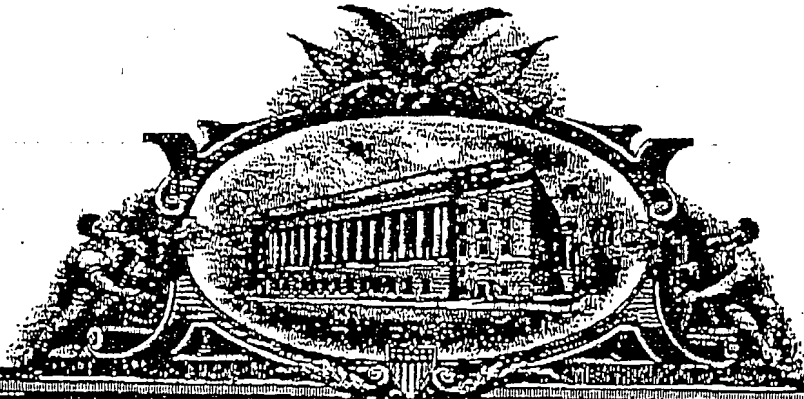
RECORDED: 02/03/2003

PATENT
 REEL: 13417 FRAME: 0944

EXHIBIT C
 PAGE 4 OF 4



A 1056302



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 27, 2003

THIS IS TO CERTIFY THAT ANNEXED IS A TRUE COPY FROM THE
RECORDS OF THIS OFFICE OF A DOCUMENT RECORDED ON
March 14, 2003



By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS

EXHIBIT D1
PAGE 2 OF 5

H. L. Jackson
H. L. JACKSON
Certifying Officer

SEP. 10. 2003 3:09PM BINGHAM MCCUTCHEN - SF

NO. 6084 P. 4

Attorney Docket No. 10061.00

ASSIGNMENT OF APPLICATION

Indivos Corporation, 635 Harrison Street, San Francisco, California, 94107, a corporation of the State of California, hereinafter referred to as "ASSIGNOR", is owner of the invention as described and set forth in the above-identified applications for United States Letters Patent:


Pat. Appl. No.
10/114,587
10/143,430
09/848,867
09/794,810

WHEREAS, Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, California 95472, a corporation of the State of California, hereinafter referred to as "ASSIGNEE", is desirous of acquiring the entire right, title and interest in the said invention and application and in any Letters Patent which may be granted on the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for and in consideration of the sum of One Dollar (\$1.00) lawful money paid to Assignor by Assignee for each of the above-identified applications for United States Letters Patent, receipt of which is hereby acknowledged, Assignor have sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee, and Assignee's successors and assigns, all right, title and interest in and to the said invention, any and all foreign applications related to said United States application for Letters Patent, and any Letters Patent which may hereafter be granted on the same in the United States and all countries throughout the world including any divisions, renewals, continuations in whole or in part, substitutions, conversions, reissues, prolongations or extensions thereof, the said interest to be held and enjoyed by said Assignee as fully and exclusively as it would have been held and enjoyed by said Assignor had this assignment and transfer not been made, to the full end and term of any Letters Patent.

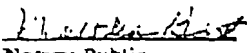
Assignor further agrees that he will, without charge to said Assignee, but at Assignee's expense, cooperate with Assignee in the prosecution of said application and/or applications, execute, verify, acknowledge and deliver all such further papers, including applications for Letters Patent and for the reissue thereof, and instruments of assignment and transfer thereof, and will perform such other acts as Assignee lawfully may request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereof in said Assignee, or Assignee's successors and assigns.

IN TESTIMONY WHEREOF, Assignor has herunto signed his name to this assignment on the date indicated below.


Ned Hoffman
President Excel For
Indivos Corporation

STATE of: CALIFORNIA
COUNTY of: SANTA CLARA

On this 3rd day of February, in the year of 2003, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.


Notary Public

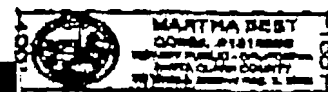


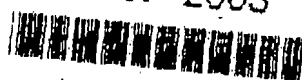
EXHIBIT D1
PAGE 3 OF 5

RECORDED: 03/14/2003

PATENT
REEL: 013490 FRAME: 0328

03-07-2003

MRD 3-7-2003



102381620

Form PTO-1595
(Rev. 10/02)

RECORDATION FORM COVER SHEET

PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

OMB No.: 0661-0027 (exp. 6/30/2006)

Tab settings 5 5 5

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Indivos Corporation

2. Name and address of receiving party(ies)

Name: Excel Innovations, Inc.

Internal Address:

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other _____

Street Address: 708 Gravenstein Highway North

Suite: 111

Tel: (510) 350-0670

City: Sebastopol State: CA Zip: 95472

Execution Date: February 3, 2003

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

B. Patent No.(s)

10/20/2003
 09/879/370 10/24/2003
 09/815/331

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Otto Lee, Esq., Reg. No. 32,871

INTELLECTUAL PROPERTY LAW GROUP, P.C.

Internal Address:

Street Address: 112 South First Street, 12th Floor

Tel: (408) 286-8933

City: San Jose, State: CA Zip: 95113

6. Total number of applications and patents involved:

7. Total fee (37 CFR 314.1): \$ 160

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

9. Statement and signature:

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Otto Lee, Esq.

Name of Person Signing

Signature

February 3, 2003

Date

Total number of pages including cover sheet, attachments and documents: 21

03/10/2003 T01RZ1

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01 FC10021
02 FC10024150:00:00
120:00:00Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231EXHIBIT D1
PAGE 4 OF 5PATENT
REEL: 013462 FRAME: 0835

Attorney Docket No. 10063.00ASSIGNMENT OF APPLICATION

WHEREAS, Indivos Corporation, 635 Harrison Street, San Francisco, California, 94107, a corporation of the State of Delaware, hereinafter referred to as "ASSIGNOR", is owner of the invention as described and set forth in the below-identified applications for United States Letters Patent:

Patent Application No.

09/398,914

09/441,107

09/731,436


09/639,948

WHEREAS, Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, California 95472, a corporation of the State of California, hereinafter referred to as "ASSIGNEE", is desirous of acquiring the entire right, title and interest in the said invention and application and in any Letters Patent which may be granted on the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for and in consideration of the sum of One Dollar (\$1.00) lawful money paid to Assignor by Assignee for each of the above-identified applications for United States Letters Patent, receipt of which is hereby acknowledged, Assignor have sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee, and Assignee's successors and assigns, all right, title and interest in and to the said invention, any and all foreign applications related to said United States application for Letters Patent, and any Letters Patent which may hereafter be granted on the same in the United States and all countries throughout the world including any divisions, renewals, continuations in whole or in part, substitutions, conversions, reissues, prolongations or extensions thereof, the said interest to be held and enjoyed by said Assignee as fully and exclusively as it would have been held and enjoyed by said Assignor had this assignment and transfer not been made, to the full end and term of any Letters Patent.

Assignor further agrees that he will, without charge to said Assignee, but at Assignee's expense, cooperate with Assignee in the prosecution of said application and/or applications, execute, verify, acknowledge and deliver all such further papers, including applications for Letters Patent and for the reissue thereof, and instruments of assignment and transfer thereof, and will perform such other acts as Assignee lawfully may request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereto in said Assignee, or Assignee's successors and assigns.

IN TESTIMONY WHEREOF, Assignor has hereunto signed his name to this assignment on the date indicated below.


Ned Hoffman
President, Excel For
Indivos Corporation

STATE of CALIFORNIA
COUNTY of SANTA CLARA

On this 20 day of FEBRUARY, in the year of 2003, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.


Notary Public

EXHIBIT D1
PAGE 5 OF 5



RECORDED: 03/07/2003

PATENT
REEL: 013462 FRAME: 0836

SEP. 10. 2003 3:09PM BINGHAM MCCUTCHEN - SF

NO. 6084 P. 3

03-17-2003

3/14/03

Form PTO-1593 (Rev. 10/02) CMB No. 0651-0027 (exp. 3/30/2008) The following are: <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office	
102387319			
To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof			
1. Name of conveying party(ies): Indivis Corporation Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		2. Name and address of receiving party(ies) Name: Excel Innovations, Inc. Internal Address: _____ Street Address: 708 Cravenstein Highway North Suite 111 Tel: (510) 390-0670 City: Sebastopol State: CA Zip: 95472 Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Nature of conveyance: <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____			
Execution Date: February 3, 2003			
4. Application number(s) or patent number(s): If this document is being filed together with a new application, the execution date of the application is: _____ A. Patent Application No.(s) 09/794,810 09/848,967 10/114,587 10/143,430 B. Patent No.(s) Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
5. Name and address of party to whom correspondence concerning document should be mailed: Name: Otto Lee, Esq. - Reg. No. 37,871 INTELLECTUAL PROPERTY LAW GROUP LLC Internal Address: _____ Street Address: 12 South First Street, 12th Floor Tel: (408) 286-8933 City: San Jose, State: CA Zip: 95113		6. Total number of applications and patents involved: <input type="checkbox"/> 7. Total fee (37 CFR 3.41).....\$_____ <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account B. Deposit account number: _____ (Attach duplicate copy of this page if paying by deposit account)	
DO NOT USE THIS SPACE			
8. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Otto Lee, Esq. Name of Person Signing Signature Date: February 3, 2003			
Total number of pages including cover sheet, attachments, and documents: 11 Their documents to be recorded with required cover sheet information is: Commissioner of Patents & Trademarks, Box Assignments Washington, D.C. 20231			

03/17/2003 LNUELLER 00000084 09794810

01 FC:8021
02 FC:8024160.00 09
120.00 09EXHIBIT D1
PAGE 1 OF 5PATENT
REEL: 013490 FRAME: 0327

3-26-03

03-26-2003

2/26/03

Form PTO-1575
(Rev. 10/02)

OMB No. 0651-0027 (exp. 8/30/2005)

Tab settings

102398088

PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Excel Innovations, Inc.

2. Name and address of receiving party(ies)

Name: Aviv, LLC

Internal Address: _____

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:

☒ Assignment☐ Merger☐ Security Agreement☐ Change of Name☐ Other _____Street Address: 400 West Third Street

Suite D108

Tel: (510) 390-0670

City: Santa Rosa State: CA Zip: 95401Execution Date: February 3, 2003Additional name(s) & address(es) attached? ☐ Yes ☐ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

09/398,914

09/441,107

B. Patent No.(s)

5,613,012

5,615,277

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Otto Lee, Esq. - Reg. No. 37,871

INTELLECTUAL PROPERTY LAW GROUP LLC

Internal Address: _____

Street Address: 400 West Third Street, Suite D108

Tel: (510) 390-0670

City: Santa Rosa State: CA Zip: 954016. Total number of applications and patents involved 30

7. Total fee (37 CFR 3.41).....\$ _____

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

1380 E130 E

(Attach duplicate copy of this page if paying by deposit account)

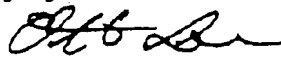
DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Otto Lee, Esq.

Name of Person Signing



Signature

February 3, 2003

Date

Total number of pages including cover sheet, attachments, and documents: 1

03/26/2003 BTOM11 00000970 09398914

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 2023101 FC:0021
02 FC:00231290.00 OP
129.00 OP

PATENT

REEL: 013516 FRAME: 0295

EXHIBIT D2
PAGE 1 OF 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOX ASSIGNMENT

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest:

Excel Innovations, Inc.

2. Name and address of party(ies) receiving an interest:

Aviv, LLC
400 West Third Street, Suite D108
Santa Rosa, CA 95401

3. Description of the interest conveyed:

☒ Assignment ☐ Change of Name ☐ Security Agreement ☐ Merger

Date of execution of attached document: February 3, 2003

- 4 (CONT.) Application number(s) or patent number(s). Additional sheet attached? Yes ☒ No ☐

A. Patent App. No.	B. Filed	C. Patent No.	D. Issued
08/722,629	9-27-96	5,764,789	6-09-98
08/739,313	10-29-96	5,737,439	4-07-98
08/818,872	3-17-97	5,802,199	9-01-98
08/820,008	3-18-97	5,805,719	9-08-98
08/687,251	7-25-96	5,838,812	11-17-98
08/705,399	8-29-96	5,870,723	2-09-99
09/244,784	2-05-99	6,012,039	1-04-00
09/245,501	2-05-99	6,154,879	11-28-00
09/243,208	2-02-99	6,192,142	2-20-01
09/239,595	1-29-99	6,230,148	5-08-01
09/330,253	6/10/99	6,411,728	6/25/02
08/902,151	7/29/97	5,982,914	11/09/99
09/183,215	10-30-98	6,366,682	4-02-02
09/239,570	1-29-99	6,269,348	7-31-01
09/357,718	7-20-99	6,397,198	5-28-02
09/731,536	12-06-00		
09/639,948	8-17-00		
10/056,982	1-23-02		
09/215,058	12-17-98		
09/398,914	9-16-1999		
10/143,430	5-09-2002		
09/794,810	2-26-2001		
09/815,434	3-22-2001		
09/848,867	5-03-2001		
09/879,370	6-11-2001		
10/241,374	9-10-2002		
10/120,328	4-10-2002		
10/114,587	4-01-2002		

5. Name and address of party to whom correspondence concerning document should be mailed:

INTELLECTUAL PROPERTY LAW GROUP LLP

Otto Lee, Esq. - Registration No. 37,871

400 West Third Street, Suite D108

Santa Rosa, California 95401

Telephone: (510) 390-0670

6. Number of applications and patents involved: ____
7. Enclosed is our check for \$ _____ in patent assignment recording fees.
8. Any overpayment should be refunded to: Ned Hoffman, 708 Gravenstein Highway North, Suite 111, Sebastopol, CA 95472
9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Dated: February 3, 2003

Respectfully submitted,

INTELLECTUAL PROPERTY LAW GROUP LLP

INTELLECTUAL PROPERTY LAW GROUP LLP

400 West Third Street, Suite D108

Santa Rosa, CA 95401

Telephone: (510) 390-0670

By: 

Otto Lee, Esq.

Registration No. 37,871

Total number of pages comprising cover sheet and attached assignment and attached copy: ____

ASSIGNMENT OF APPLICATION

WHEREAS, Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, California 95472, a corporation of the State of California, hereinafter referred to as "ASSIGNOR", is owner of the invention as described and set forth in the below-identified applications for United States Letters Patent:

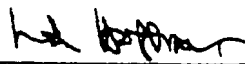
<u>Patent Application Nos.</u>	
09/398,914 -	10/143,430
09/441,107	09/731,536
09/639,948*	10/056,982
09/215,058	09/398,914 -
09/794,810	09/815,434
09/848,867	09/879,370
10/241,374	10/120,328
10/114,587	

WHEREAS, Aviv LLC, 400 West Third Street, Suite D108, Santa Rosa, California 95401, a corporation of the State of California, hereinafter referred to as "ASSIGNEE", is desirous of acquiring the entire right, title and interest in the said invention and application and in any Letters Patent which may be granted on the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for and in consideration of the sum of One Dollar (\$1.00) lawful money paid to Assignor by Assignee for each of the above-identified applications for United States Letters Patent, receipt of which is hereby acknowledged, Assignor has conditionally sold, assigned and transferred, and by these presents does conditionally sell, assign and transfer unto said Assignee, and Assignee's successors and assigns, all right, title and interest in and to the said invention, any and all foreign applications related to said United States application for Letters Patent, and any Letters Patent which may hereafter be granted on the same in the United States and all countries throughout the world including any divisions, renewals, continuations in whole or in part, substitutions, conversions, releases, prolongations or extensions thereof, the said interest to be held and enjoyed by said Assignee as fully and exclusively as it would have been held and enjoyed by said Assignor had this assignment and transfer not been made, to the full end and term of any Letters Patent.

Assignor further agrees that he will, without charge to said Assignee, but at Assignee's expense, cooperate with Assignee in the prosecution of said application and/or applications, execute, verify, acknowledge and deliver all such further papers, including applications for Letters Patent and for the release thereof, and instruments of assignment and transfer thereof, and will perform such other acts as Assignee lawfully may request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereto in said Assignee, or Assignee's successors and assigns.

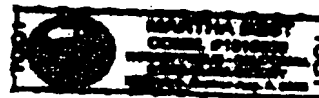
IN TESTIMONY WHEREOF, Assignor has herunto signed his name to this assignment on the date indicated below.


 Ned Hoffman
 President, Excel Innovations Inc.

STATE of: CALIFORNIA
 COUNTY of: SANTA CLARA

On this 3RD day of FEBRUARY, in the year of 2003, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.


 Notary Public



RECORDED: 03/26/2003

PATENT
 REEL: 013516 FRAME: 0298

Form PTO-1595
(Rev. 10/02)
OMB No. 0851-0027 (exp. 6/30/2005)

02-19-2003

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Tab settings

102358921

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Indivos Corporation

2. Name and address of receiving party(ies)

Name: Excel Innovations, Inc.

Internal Address:

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:



Assignment



Merger



Security Agreement



Change of Name



Other

Street Address: 708 Gravenstein Highway North

Suite 111

Tel: (510) 390-0670

City: Sebastopol State: CA Zip: 95472

Execution Date: February 3, 2003

Additional name(s) & address(es) attached? ☐ Yes ☐ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

09/398,914

09/441,107

B. Patent No.(s)

5,613,012

5,615,277

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Otto Lee, Esq. - Reg. No. 37,871

INTELLECTUAL PROPERTY LAW GROUP LLC

Internal Address:

Street Address: 12 South First Street, 12th Floor

Tel: (408) 286-8933

City: San Jose, State: CA Zip: 95113

6. Total number of applications and patents involved: 23

7. Total fee (37 CFR 3.41).....\$ 920.00



Enclosed



Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Otto Lee, Esq.

Name of Person Signing

Otto Lee

Signature

February 3, 2003

Date

Total number of pages including cover sheet, attachments, and documents: 24

02/11/2003 6TOM11 00000043 09398914

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

01 FC:8021
02 FC:8023

920.00 DP
120.00 DP

EXHIBIT E
PAGE 1 OF 4

PATENT
REEL: 013429 FRAME: 0325

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOX ASSIGNMENT

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest:

Indivos Corporation

2. Name and address of party(ies) receiving an interest:

Excel Innovations, Inc.
708 Gravenstein Highway North, Suite 111
Sebastopol, CA 95472

3. Description of the interest conveyed:

☒ Assignment ☐ Change of Name ☐ Security Agreement ☐ Merger

Date of execution of attached document: February 3, 2003

- 4 (CONT.) Application number(s) or patent number(s). Additional sheet attached? Yes ☐ No ☒

<u>A. Patent Application No.</u>	<u>B. Filed</u>	<u>C. Patent No.</u>	<u>D. Issued</u>
08/722,629	9-27-96	5,764,789	6-09-98
08/818,872	3-17-97	5,802,199	9-01-98
08/820,008	3-18-97	5,805,719	9-08-98
08/687,251	7-25-96	5,838,812	11-17-98
08/705,399	8-29-96	5,870,723	2-09-99
09/244,784	2-05-99	6,012,039	1-04-00
09/245,501	2-05-99	6,154,879	11-28-00
09/243,208	2-02-99	6,192,142	2-20-01
09/239,595	1-29-99	6,230,148	5-08-01
09/183,215	10-30-98	6,366,682	4-02-02
09/239,570	1-29-99	6,269,348	7-31-01
09/357,718	7-20-99	6,397,198	5-28-02
08/739,313	10-29-96	5,737,439	4-07-98
09/330,253	6-10-99	6,411,728	6-25-02
08/902,151	7-29-97	5,982,914	11-09-99
09/731,536	12-06-00		
09/639,948	8-17-00		
10/056,982	1-23-02		
09/215,058	12-17-98		

Name and address of party to whom correspondence concerning document should be mailed:

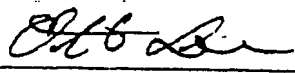
INTELLECTUAL PROPERTY LAW GROUP LLP
Otto Lee, Esq. - Registration No. 37,871
12 South First Street
12th Floor
San Jose, California 95113
Telephone: (408) 286-8933

6. Number of applications and patents involved: 23
7. Enclosed is our check for \$920.00 in patent assignment recording fees.
8. Any overpayment should be refunded to: Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, CA 95472
9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Dated: February 3, 2003

Respectfully submitted,
INTELLECTUAL PROPERTY LAW GROUP LLP

INTELLECTUAL PROPERTY LAW GROUP LLP
12 South First Street, 12th Floor
San Jose, CA 95113
Telephone: (408) 286-8933

By: 
Otto Lee, Esq.
Registration No. 37,871

Total number of pages comprising cover sheet and attached assignment and attached copy: 26

PATENT
REEL: 013429 FRAME: 0327

EXHIBIT E
PAGE 3 OF 4

ASSIGNMENT OF LETTERS PATENT

WHEREAS, Indivos Corporation, 635 Harrison Street, San Francisco, California, 94107, a corporation of the State of Delaware, hereinafter referred to as "ASSIGNOR", is owner of the invention as described and set forth in the below-identified United States Letters Patents, identified as:

Patent No.

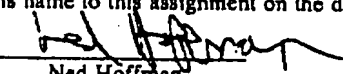
5,613,012
5,615,277
5,764,789
5,737,439
5,802,199
5,805,719
5,838,812
5,870,723
6,012,039
6,154,879
6,192,142
6,230,148
6,411,728
5,982,914
6,366,682
6,269,348
6,397,198

WHEREAS, Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, California 95472, a corporation of the State of California, hereinafter referred to as "ASSIGNEE", is desirous of acquiring the entire right, title and interest in the said invention and the Letters Patent which has been granted on the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for and in consideration of the sum of One Dollar (\$1.00) lawful money paid to Assignor by Assignee for each of the above-identified United States Letters Patent, receipt of which is hereby acknowledged, Assignor has sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee, and Assignee's successors and assigns, all right, title and interest in and to the said invention, any and all foreign applications related to said United States Letters Patent, and any Letters Patent which may hereafter be granted on the same invention in any and all countries throughout the world including any divisions, renewals, continuations in whole or in part, substitutions, conversions, reissues, prolongations or extensions thereof, the said interest to be held and enjoyed by said Assignee as fully and exclusively as it would have been held and enjoyed by said Assignor had this assignment and transfer not been made, to the full end and term of any Letters Patent.

Assignor further agrees that he will, without charge to said Assignee, but at Assignee's expense, cooperate with Assignee in the prosecution of said application and/or applications, execute, verify, acknowledge and deliver all such further papers, including applications for Letters Patent and for the reissue thereof, and instruments of assignment and transfer thereof, and will perform such other acts as Assignee lawfully may request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereto in said Assignee, or Assignee's successors and assigns.

IN TESTIMONY WHEREOF, Assignor has hereunto signed his name to this assignment on the date indicated below.


Ned Hoffman
President Excel For
Indivos Corporation

STATE of: California
COUNTY of: Santa Clara

On this 21st day of February, in the year of 1994, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

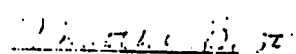

Notary Public



EXHIBIT E
PAGE 4 OF 4

PATENT
REEL: 013429 FRAME: 0328

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

POWER OF ATTORNEY

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Sir:

I hereby appoint Practitioner named below:

<u>Practitioner Name</u>	<u>Registration Number</u>
Otto Lee, Esq.	37871

As my attorney to prosecute the applications identified below, and to transact all business in the United States Patent and Trademark Office connected therewith.

<u>A. Patent App. No.</u>	<u>B. Filed</u>	<u>C. Patent No.</u>	<u>D. Issued</u>
08/442,895	5-17-95	5,613,012	3-18-97
08/345,523	11-28-94	5,615,277	3-25-97
08/722,629	9-27-96	5,764,789	6-09-98
08/739,313	10-29-96	5,737,439	4-07-98
08/818,872	3-17-97	5,802,199	9-01-98
08/820,008	3-18-97	5,805,719	9-08-98
08/687,251	7-25-96	5,838,812	11-17-98
08/705,399	8-29-96	5,870,723	2-09-99
09/244,784	2-05-99	6,012,039	1-04-00
09/245,501	2-05-99	6,154,879	11-28-00
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09/239,595	1-29-99	6,230,148	5-08-01
09/330,253	6/10/99	6,411,728	6/25/02
08/902,151	7/29/97	5,982,914	11/09/99
09/183,215	10-30-98	6,366,682	4-02-02
09/239,570	1-29-99	6,269,348	7-31-01
09/357,718	7-20-99	6,397,198	5-28-02
09/398,914	9-16-99		
09/441,107	11-16-99		
09/731,536	12-06-00		
09/639,948	8-17-00		
10/056,982	1-23-02		
09/215,058	12-17-98		

Please change the correspondence address for the above-identified application to the above-mentioned patent application.

<u>Firm and Practitioner Name</u>	<u>Registration Number</u>
Otto Lee, Esq.	37871
Intellectual Property Law Group, LLP	
12 South First Street, 12 th Floor	
San Jose, CA 95113 USA	
Telephone: 408-286-8933	
Fax: 408-286-8932	

Respectfully submitted,

Dated: 2/03/03

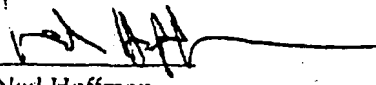
By: 
Ned Hoffman
President Excel For
Indivos Corporation

EXHIBIT F
PAGE 1 OF 22

PATENT
REEL: 013429 FRAME: 0329

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Excel Innovations, Inc.

Application No./Patent No.: 6,230,148

Filed/Issue Date: 5-08-2001

Entitled: Tokenless biometric electronic check transaction

Excel Innovations, Inc.

(Name of Assignee)

a Corporation

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.
The extent (by, percentage) of its ownership interest is _____ %

in the patent application/patent identified above by virtue of either:

- A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

- B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

Hoffman, Ned; Lee, Jonathan Alexander;

1. From: Pat. David Ferrin, Jr. To: SmartTouch Inc.

The document was recorded in the United States Patent and Trademark Office at Reel 010614, Frame 0239, or for which a copy thereof is attached.

2. From: SmartTouch, Inc. To: VeriStar Corporation

The document was recorded in the United States Patent and Trademark Office at Reel 012010, Frame 0454, or for which a copy thereof is attached.

3. From: VeriStar Corporation To: Indivos Corporation

The document was recorded in the United States Patent and Trademark Office at Reel 012263, Frame 0077, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

- ☐ Copies of assignments or other documents in the chain of title are attached.
[NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

February 3, 2003
Date

Ned Hoffman

Typed or printed name

[Signature]
Signature

President Excel For

Indivos Corporation

Title

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

AGREEMENT

The parties to this agreement are Omnilock Incorporated, a California corporation of 46 Shattuck Square, Suite 14, Berkeley, CA 94704, (hereinafter "Omnilock") and SmartTouch LLC, a California company of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "SmartTouch").

RECITALS:

WHEREAS, Omnilock has certain rights and interest in and to Ned Hoffman's Tokenless Biometric Computer System invention (hereinafter "Invention"), and has the right to grant non-exclusive sublicenses; and

WHEREAS, SmartTouch desires to obtain a non-exclusive, non-assignable, conditional sublicense pertaining to Invention; and

WHEREAS, Omnilock is willing to conditionally grant such a non-exclusive sublicense in pursuant to the terms and conditions set forth hereinbelow; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and undertakings contained herein, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS.** As used herein, the terms set forth below shall have the following meanings:

1.1. "Parties" means Omnilock Inc., a California corporation of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "Omnilock" or "MasterLicensee"), and SmartTouch LLC, a California limited liability company of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "SmartTouch" or "SubLicensee").

1.2. "Agreement" means this contract between the Parties, which is a non-exclusive, non-assignable, conditional sublicense.

1.3. "Effective Date" means May 8, 1995, the date on which this Agreement is executed by both parties.

1.4. "Inventor" means Ned Hoffman (hereinafter "Inventor", "Ned Hoffman" or "NH")

1.4.1. "Inventor Employment Agreement" or "NH Employment Agreement" means Ned Hoffman's executed employment agreement with Omnilock, which is attached hereto as Addendum I.

1.5. "Consultant(s)" means David F. Pare, Jr. (hereinafter "Consultant" or "DP"), Philip D. Lapsley (hereinafter "Consultant" or "PL"), Raymond Cranfill ("Consultant" or "RC"), Ali Kamarei ("Consultant" or "AK"), and/or Jonathan Lee (hereinafter "Consultant" or "JL")

1.5.1. "Consultant Agreement(s)" means and includes all executed agreements between each Consultant and Ned Hoffman, and/or between each Consultant and Omnilock, which are attached hereto as Addendum II.

1.6. "Invention" means Ned Hoffman's tokenless system using biometrics to authorize access to computers for purpose of conducting electronic communications, including transmissions and financial transactions, including but not limited to all embodiments described in the Addenda hereinbelow and attached hereto:

1.6.1. Addendum III attached hereto, dated 9/22/94 and entitled "Print Money: A new, patentable technology for consumer financial transactions", and;

1.6.2. Addendum IV attached hereto, dated 11/28/94 and entitled "Consultant Confidentiality Agreement" incorporating "Exhibit A" attached hereto, and;







- 1.6.3. Addendum V attached hereto, dated 5/08/95 and entitled "Tokenless identification system for authorization of electronic transactions and electronic transmissions", and;
- 1.6.4. All work product by Ned Hoffman pursuant to NH Employment Agreement and all work product by Consultants pursuant to Consultant Agreements, pertaining to and/or based upon Ned Hoffman's tokenless system using biometrics to authorize access to computers for purpose of conducting electronic communications, including transmissions and financial transactions (known collectively herein as "Work Product"). Said Work Product includes, but is not limited to, any and all of the following, encompassing both the United States for domestic filings, and international counterparts for foreign filings: issued patents, pending patent applications, continuations, continuations-in-part, reissues, foreign counterparts, copyrights, trade secrets, know-how, trademarks, utility models, prototypes, CAD designs, engineering specifications, computer software, and computer hardware.

1.7. "Contract Year" means each 12 (twelve) month period commencing on the Effective Date of this Agreement.

1.8. "Quarterly Reports" means the schedule of performance reports and payments due to Omnilock from SmartTouch, in order for SmartTouch to satisfy the "Performance Guarantees" as defined in Section 4 hereinbelow. Such Quarterly Reports shall be promptly provided to Omnilock on the first day of July, October, January and April of each Contract Year.

2. GRANTS

2.1. Subject to all of the terms and conditions of this Agreement, Omnilock hereby grants to SmartTouch:

- 2.1.1. A non-exclusive, non-transferable, conditional sublicense to the Invention, to make, use and sell the Invention throughout the United States and the world, and;
- 2.1.2. The permission to utilize the services of Consultants and to have Ned Hoffman and/or Consultants conditionally assign patents to SmartTouch (herein "Permission"), with the restriction that any termination of this Agreement pursuant to Section 6 hereinbelow shall result in the immediate termination of both said Permission and of any/all said conditional assignments, whereby any/all such conditional assignments are automatically and immediately rescinded.

3. REPRESENTATIONS AND WARRANTIES OF OMNILOCK AND SMARTTOUCH

3.1. Omnilock, as the Master Licensee, represents and warrants that:

- 3.1.1. Pursuant to the Inventor-Omnilock License Agreement dated May 8, 1995 and attached hereto as Addendum VI, the Inventor has granted to Omnilock an exclusive, non-transferable license to the Invention, to have made, use and sell the Invention throughout the United States and the world, and;
- 3.1.2. Pursuant to the Inventor's express consent to Omnilock, attached hereto as Addendum VII, Omnilock has the right to grant to SmartTouch a non-exclusive, non-transferable, conditional sublicense.

3.2. SmartTouch, as the Sublicensee, understands and agrees that the Invention has uniquely valuable commercial potential, and hereby represents and warrants that SmartTouch will dedicate Best Efforts to diligently perform all of its duties pursuant to this Agreement, including to:

- 3.2.1. Make, use and sell the Invention on behalf of Omnilock, and;
- 3.2.2. Meet and exceed the Performance Guarantees as defined in Section 4 hereinbelow.

4. PERFORMANCE GUARANTEES.

4.1. SmartTouch will dedicate Best Efforts to achieve the following performance guarantees ("Performance Guarantees"):

- 4.1.1. Within 6 (six) Contract Years from the Effective Date, to generate at least \$20 Million (twenty million dollars) in annual sales from the Invention, and;
- 4.1.2. Within 6 (six) Contract Years from the Effective Date, to pay Omnilock an aggregate total of at least \$20 Million (twenty million dollars) in cash resulting from SmartTouch's commercialization of the Invention.

4.2. For the purpose of verifying the overall quality and function of the Invention, it is agreed that SmartTouch will promptly provide Omnilock with all Quarterly Reports, including: an itemized statement detailing SmartTouch's total revenues, margins and costs relating to the Invention, and; a comprehensive description of SmartTouch's sales and marketing results from the preceding quarter and SmartTouch's projected sales and marketing objectives for the upcoming quarter; a detailed description of all other important activities and accountings related to Invention, along with samples of engineering specifications, public relations, sales and marketing materials which SmartTouch has been using with respect to the Invention, and; the right to preview and the right to approve those products and materials which feature the Invention, including but not limited to prototypes, packaging, advertising, marketing materials and the like, whereby approval of such materials by Omnilock shall not be unreasonably withheld.

5. INFRINGEMENT BY THIRD PARTIES. It is understood and agreed by both Parties that Omnilock is responsible for a diversified portfolio of patented technologies, covering a broad range of markets from sports and fitness to apparel to housewares to computers to automotive accessories. It is the practice of Omni therefore to require that its licensees and/or sublicensees be the primary responsible parties for enforcing infringement. Therefore, it is agreed that:

5.1. If either Party discovers that any patents or patent applications related to the Invention are being or may be infringed, it shall communicate the details of such suspected or potential infringement to the other party. SmartTouch shall thereupon have the right, and first obligation, to take whatever action it deems necessary, including the filing of lawsuits, to protect the rights of the Parties and to terminate any suspected or potential infringement. Omnilock shall fully cooperate, with SmartTouch if SmartTouch takes any such action. All expenses related thereto incurred by the Parties shall be borne by SmartTouch. If SmartTouch recovers any damages or compensation for any action it takes hereunder, SmartTouch shall retain 100% (one hundred percent) of such monies. In the event SmartTouch fails to bring an action at SmartTouch's expense for infringement under any patent or trademark related to the Invention, Omnilock may in its sole discretion, upon ten (10) days written notice to SmartTouch, terminate this Agreement, with SmartTouch thereby being granted six (6) months in which to liquidate any existing inventory.

5.2. SmartTouch hereby agrees not to either: challenge the validity of the Invention ("Invention Validity"), nor: challenge the validity of Omnilock's rights as MasterLicensee to the Invention ("MasterLicensee Validity") pursuant to the Employment Agreement. Further, SmartTouch hereby agrees not to either: participate in any third party attempt to challenge to the Invention Validity, nor; participate in any third party attempt to challenge to the MasterLicensee Validity.

6. TERM AND TERMINATION.

6.1. Unless terminated earlier pursuant to the terms of this Section 6, this Agreement shall automatically terminate upon the expiration of all of the patents pertaining to any and all Work Product related to and/or derived from the Consultants, the Consulting Agreements, and the Invention and/or the Work Product

6.2. Termination of this Agreement for any reason shall not relieve either Party of any of its obligations to the other Party accrued according to the terms of this Agreement prior to termination.

6.3. Unintentional Breaches. In addition to other rights of termination provided in this Section 6, if either Party breaches this Agreement (hereinafter "Breaching Party") by unintentionally failing to comply with any provision of this Agreement, then upon the discovery of said breach by the other Party, said other Party shall have the right, but not the obligation, to give notice of such breach to the Breaching Party within ten (10) days of the other Party having discovered the occurrence of such breach. In such instance, the Breaching Party shall then have ten (10) calendar days in which to cure such breach. The determination as to whether the breach has been satisfactorily cured shall be within the sole discretion of the other Party, with said determination to be made in good faith. At the expiration of such ten (10) calendar day period, should the other Party determine that the Breaching Party has not or will not cure the breach to the satisfaction of the other Party, the other Party has the right, in its sole discretion, to terminate this Agreement immediately upon providing written notice of such to the other Party.

6.4. Intentional Breaches, Bad Faith, Fraud. In addition to other rights of termination provided in this Section 6, if either Party breaches this Agreement (hereinafter "Breaching Party") by intentionally failing to comply with any provision of this Agreement, then upon the discovery of said breach by the other Party, said other Party shall have the sole right to determine whether the Breaching Party cannot or will not cure the breach to the satisfaction of the other Party. In the event the other Party determines, in its sole discretion, that the Breaching Party has intentionally breached this Agreement, or that the Breaching Party has acted in Bad Faith, or that the Breaching Party has either committed fraud or been complicit in the committing of fraud, the other Party has the right, in its sole discretion, to terminate this Agreement.

6.4.1. Irreparable Harm. Due to the fact that both Parties understand and agree that the Invention has uniquely valuable commercial potential, the Parties hereby agree that breach of this Agreement pursuant to Section 6.3. hereinabove by either party will cause irreparable damage to the other Party. Therefore, each Party agrees that the other Party shall be entitled to injunctive relief in any court of competent jurisdiction for any breach under Section 6.2. hereinabove, in addition to all other remedies and damages said other Party may be due.

6.4.2. Termination of this Agreement for reasons other than a breach pursuant to Section 6.2. and 6.3. hereinabove, shall not prevent SmartTouch from completing, selling and/or delivering any Invention in inventory, in the process of manufacture or on order on the termination date for a period of six (6) months.

6.5. Guarantee; Rights of Reversion/Rescission. All SmartTouch obligations to Omnilock as provided under this Agreement, including all Performance Guarantees, obligations, promises and payments due by SmartTouch to Omnilock pursuant to the terms of this Agreement, shall be guaranteed and secured, by any and all Work Product related to and/or derived from the Consultants, the Consulting Agreements, and the Invention, including, but not be limited to, all of the following: patents; trademarks; copyrights; conditional assignments; computer software and/or computer hardware pertaining to the Invention. Therefore, pursuant to any section or sub-section of Section 6 hereinabove, all Work Product shall revert immediately, unconditionally and completely to Omnilock in the event of a material breach by SmartTouch of any term or provision in this Agreement, including but not limited to SmartTouch's bankruptcy and/or any SmartTouch financial failure and/or insolvency. In such event, all conditional assignments pursuant Section 2.1.2. hereinabove are automatically and immediately rescinded, and SmartTouch hereby automatically and irrevocably designates and appoints Omnilock and its duly authorized officers and agents as its agent and attorney in fact, to act for and in behalf of SmartTouch, to execute and file with the Patent and Trademark Office any re-recording of any/all such assignments, and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent or copyright registrations thereon with the same legal force and effect as if originally executed by SmartTouch.

11/5/08/95)

Page 4 of 6

Initialed: For Omnilock



For SmartTouch



Witness



PATENT

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EXHIBIT F
PAGE 6 OF 22

7. GENERAL PROVISIONS.

7.1. Indemnifications.

- 7.1.1. Omnilock hereby indemnifies and agrees to hold SmartTouch harmless from, against and in respect of and shall on demand reimburse SmartTouch for any and all loss, liability or damages incurred or suffered by SmartTouch arising from, or in connection with, any and all actions, settlements, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, relating in any way to any untrue representation set forth by Omnilock in this Agreement, and:
- 7.1.2. SmartTouch hereby indemnifies and agrees to hold Omnilock harmless from, against and in respect of and shall on demand reimburse Omnilock for any and all loss, liability or damages incurred or suffered by Omnilock arising from, or in connection with, any and all actions, settlements, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, relating in any way to a breach under this Agreement by SmartTouch, and relating in any way to any untrue representation set forth by SmartTouch pursuant to SmartTouch's fundraising, advertising, manufacture, distribution, or sale of Invention under this Agreement.
- 7.1.3. The indemnity set forth in this Section 11 shall survive the termination of this Agreement.

7.2. Waiver. The waiver by either Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

7.3. Entire Agreement. This Agreement constitutes the entire understanding between the Parties and shall supersede all previous communications, negotiations, proposals, representations, conditions, warranties or agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof. This Agreement may not be modified unless in writing and signed by both of the Parties.

7.4. Non-Assignability, Non-Transferability by SubLicensee. Neither this Agreement nor any of the rights, provisions and/or obligations hereunder may be assigned or transferred by the SubLicensee, SmartTouch, without the prior written consent of the MasterLicensee, Omnilock.

7.5. Notices. Any notice or accounting report required to be given hereunder shall be in writing and shall be deemed effective and sufficiently given to the parties listed below upon any of the following: immediately upon hand-delivery, or; immediately upon electronic facsimile, or; upon 1 (one) business day after being sent via Federal Express, or; upon 3 (three) business days after being sent via certified U.S. mail, or; upon 5 (five) business days after being sent via standard first-class U.S. mail:

For Omnilock:

Omnilock Incorporated
46 Shattuck Square, Suite 14
Berkeley, California 94704

With copies to Omnilock legal representative:

Thomas A. Maier, Esq.
Pezzola & Renke
1999 Harrison Street
Oakland, CA 94612

For SmartTouch:

SmartTouch LLC
46 Shattuck Square, Suite 14
Berkeley, California 94704

With copies to SmartTouch legal representative:

Ali Kamarei, Esq.
280 Colorado Ave
Palo Alto, CA 94301

or to such other address of which one Party may give at least 3 (three) business days written notice to the other Party.

- 7.6. Governing Law. This Agreement and the legal relations covered herein, shall be interpreted, construed and determined in accordance with the laws of the state of California and the parties hereby consent to the jurisdiction of all courts in California having proper subject matter jurisdiction.
- 7.7. Captions. Captions are inserted for convenience of reference only and shall not be considered as being of any significance whatsoever in the construction and interpretation of this Agreement.
- 7.8. Confidentiality. The Parties agree to keep in confidence, not disclose, and not use (except to employees or agents on a need-to-know basis as contemplated by this Agreement) all confidential data of the other that each receives under this Agreement. These obligations do not apply to any Confidential Information that: (a) is now or becomes generally available to the public without violation of these obligations; (b) is already known or is independently developed by the receiving party; or (c) becomes available to the receiving Party who did not receive such information directly or indirectly in confidence from the disclosing Party.
- 7.9. Preparation of the Agreement. Legal representatives for each of the Parties, as respectively specified under Notices, Section 7.5. hereinabove, have participated in the negotiating and preparing of this Agreement. Therefore, this Agreement shall not be construed against either Party on the grounds of that Party's participation in preparing this Agreement.
- 7.10. Interpretation. In the event of conflict between provisions herein or ambiguity, specific terms shall prevail over general terms in the interpretation of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Purchase Order, Letter of Credit, or other document delivered pursuant to this Agreement, the terms of this Agreement shall control.
- 7.11. Severability. If any term, clause, or provision of this Agreement shall be judged to be invalid or unenforceable, the validity or unenforceability of any other term, clause or provision shall not be affected; and such invalid or unenforceable term, clause or provision shall be deemed deleted from this contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in Berkeley, California, ON THIS DAY, May 8, 1995:

For Omnilock Incorporated:

By: [Signature]
Ned Hoffman, President

Date: 5/08/95

For SmartTouch LLC:

By: [Signature]
Ned Hoffman, Manager

Date: 5/08/95

Witnessed By: [Signature]
Ali Kamarei, Esq.

Date: 5-8-1995

State of California



SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of — page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of



Kevin Shelley

Secretary of State

PATENT

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EXHIBIT F
PAGE 9 OF 22



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P O BOX 942857
SACRAMENTO, CA 94257-0541

TAX CLEARANCE CERTIFICATE

September 27, 1995

EXPIRATION DATE: January 15, 1996

PEZZOLA & REINKE
MARY A FITZPATRICK
SUITE 1300
1999 HARRISON ST
OAKLAND CA 94612

ISSUED TO: OMNIOCK, INC.
Corporate Number 1511372 014**

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid or are secured by bond deposit or other security.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to Office of the Secretary of State at 1500 11th Street, 3rd Floor, Sacramento CA 95814. The telephone number is (916) 657-5448.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

FRANCHISE TAX BOARD

By M. Hermansen
Special Audit Unit
Corporation Audit Section
Telephone (916) 845-4124

COPY

PATENT
REEL: 013429 FRAME: 0338

EXHIBIT F
PAGE 10 OF 22

VERIFICATION

Ned Hoffman and Harold Silen say:

They are the President and Secretary respectively of Sports-Mitt International, Inc., a California Corporation.

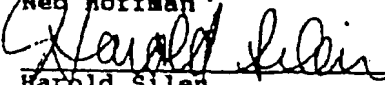
They have read the foregoing Certificate of Ownership and know the contents thereof.

The same is true of their own knowledge.

Executed on ~~October~~ ^{November 9}, 1995 at Berkeley, Alameda County, California.

We declare under penalty of perjury that the foregoing is true and correct.


Ned Hoffman


Harold Silen

176/cert-own

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PATENT
REEL: 013429 FRAME: 0339

EXHIBIT F
PAGE 11 OF 22

1506402

FILED
In the office of the Secretary of State
of the State of California

NOV 30 1995

1511372 Out
CERTIFICATE OF OWNERSHIP
MERGING
OMNILOCK, INC.
INTO
SPORTS-MITT INTERNATIONAL, INC.

Bill Jones
CL. JONES Secretary of State

Ned Hoffman, President, and Harold Silen, Secretary of Sports-Mitt International, Inc., a California corporation ("this Corporation"), certify that:

1. Sports-Mitt International, Inc. owns all the outstanding stock of Omnilock, Inc., a corporation duly incorporated on November 27, 1989 under the laws of the state of California.
2. The following resolutions were adopted by a majority of the Board of Directors of Sports-Mitt International, Inc.:

WHEREAS, this corporation owns all the outstanding stock of Omnilock, Inc.; and

WHEREAS, it is deemed in the best interests of this corporation and its shareholders that this corporation merge Omnilock, Inc. into itself and assume all of its obligations; it is:

RESOLVED, that this corporation merge Omnilock, Inc. into itself as of the effective date of the Certificate of Ownership to be filed pursuant to Section 1110 of the California Corporations Code, and assume all obligations of the merged corporation.

RESOLVED FURTHER, that the President and Secretary of this Corporation are directed to execute and file a Certificate of Ownership pursuant to Section 1110 of the California Corporations Code and to take such further actions as may be necessary or proper to accomplish such merger.

3. Said resolutions were adopted at a special meeting of the Board of Directors of this corporation held at 2:00 p.m. Pacific Daylight Time on October 9, 1995 by telephonic conference call. This corporation has three directors, all of whom were present via telephone at such meeting, and said resolutions were adopted by unanimous vote of the directors.

By:

Ned Hoffman, President

Harold Silen, Secretary

176\cert. wn

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EXHIBIT F
PAGE 12 OF 22

PATENT
REEL: 013429 FRAME: 0340

1511372

ARTICLES OF INCORPORATION

OF

OMNILOCK, INC.

FILED

In the office of the Secretary of State
of the State of California

NOV 27 1989

Wenck Fong
WENCK FONG CO. Secretary of State

I.

The name of the corporation is OMNILOCK, INC.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of the corporation's initial agent for service of process are Robert N. Katz, 2150 Shattuck Avenue, Berkeley, California, 94704.

IV.

The total number of shares which this corporation is authorized to issue is one hundred thousand (100,000). All of the corporation's issued shares of stock shall be held of record by no more than thirty-five (35) persons. This corporation is a close corporation.

Robert N. Katz

The undersigned declares that the undersigned has executed these Articles of Incorporation and that this instrument is the act and deed of the undersigned.

Robert N. Katz

EXHIBIT F
PAGE 13 OF 22

PATENT
REEL: 013429 FRAME: 0341

VERIFICATION

Ned Hoffman and Harold Silen say:

They are the President and Secretary respectively of Sports-Mitt International, Inc., a California Corporation.

They have read the foregoing Certificate of Ownership and know the contents thereof.

The same is true of their own knowledge.

Executed on ^{November 9}~~October~~, 1995 at Berkeley, Alameda County, California.

We declare under penalty of perjury that the foregoing is true and correct.


Ned Hoffman


Harold Silen

A468822

FILED
In the office of the Secretary of State
of the State of California

1506878 Jan

CERTIFICATE OF OWNERSHIP
MERGING
OMNILOCK, INC.
INTO
SPORTS-MITT INTERNATIONAL, INC.

NOV 30 1995-

Bill Jones
T.L. JONES, Secretary of State

Ned Hoffman, President, and Harold Silan, Secretary of Sports-Mitt International, Inc., a California corporation ("this Corporation"), certify that:

1. Sports-Mitt International, Inc. owns all the outstanding stock of Omnilock, Inc., a corporation duly incorporated on November 27, 1989 under the laws of the state of California.
2. The following resolutions were adopted by a majority of the Board of Directors of Sports-Mitt International, Inc.:

WHEREAS, this corporation owns all the outstanding stock of Omnilock, Inc.; and

WHEREAS, it is deemed in the best interests of this corporation and its shareholders that this corporation merge Omnilock, Inc. into itself and assume all of its obligations; it is:

RESOLVED, that this corporation merge Omnilock, Inc. into itself as of the effective date of the Certificate of Ownership to be filed pursuant to Section 1110 of the California Corporations Code, and assume all obligations of the merged corporation.

RESOLVED FURTHER, that the President and Secretary of this Corporation are directed to execute and file a Certificate of Ownership pursuant to Section 1110 of the California Corporations Code and to take such further actions as may be necessary or proper to accomplish such merger.

3. Said resolutions were adopted at a special meeting of the Board of Directors of this corporation held at 2:00 p.m. Pacific Daylight Time on October 9, 1995 by telephonic conference call. This corporation has three directors, all of whom were present via telephone at such meeting, and said resolutions were adopted by unanimous vote of the directors.

By:

Ned Hoffman, President

Harold Silan, Secretary

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PAGE 15 OF 22

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FILED
In the office of the Secretary of State
of the State of California

FEB 1 1993

CERTIFICATE OF AMENDMENT
OF
RESTATED ARTICLES OF INCORPORATION

March Fong Eu
MARCH FONG EU, Secretary of State

NED HOFFMAN AND ROBERT N. KATZ certify that:

1. They are the president and secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California corporation.

2. Article III of the Amended and Restated Articles of Incorporation is amended to read as follows:

This corporation is authorized to issue only one class of shares of stock, and the total number of shares that this corporation is authorized to issue is one million (1,000,000). Upon amendment of these Articles to read as herein set forth, each outstanding share of stock is split and converted into 2.5 (two and one-half) shares.

3. The foregoing amendment and restatement of the Articles of Incorporation of the corporation has been duly approved by the Board of Directors of the corporation.

4. The foregoing amendment of the Articles of Incorporation of the corporation has been duly approved by the shareholders of the corporation in accordance the Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of the corporation is 400,000 (four-hundred thousand) shares of Common stock. The number of shares of common stock voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was more than two-thirds of the outstanding shares of common stock.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true and correct of their own knowledge.

Date: Jan. 12, 1993

Ned Hoffman
Ned Hoffman, President

Robert N. Katz
Robert Katz, Secretary

EXHIBIT F
PAGE 16 OF 22

PATENT
REEL: 013429 FRAME: 0344

The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code."

3. The foregoing amendment and restatement of the Articles of Incorporation of the corporation has been duly approved by the Board of Directors of the corporation.

4. The foregoing amendment and restatement of the Article of Incorporation of the corporation has been duly approved by the shareholders of the corporation in accordance with the Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of the corporation is 81,250 shares of Common Stock. The number of shares of Common Stock voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was more than two-thirds of the outstanding shares of Common Stock.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true and correct of their own knowledge.

Date: May 29, 1991

Ned Hoffman, President

Robert Katz, Secretary

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FILED
In the office of the Secretary of State
of the State of California

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

JUL 9 1991

SPORTS-MITT INTERNATIONAL, INC.

March Fong Eu
MARCH FONG EU, Secretary of State

Ned Hoffman and Robert Katz hereby certify that:

1. They are the President and Secretary of Sports-Mitt International, Inc., a California corporation.
2. The Articles of Incorporation of the corporation are amended and restated to read in their entirety as follows:

"I

The name of this corporation is
Sports-Mitt International, Inc.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

This corporation is authorized to issue only one class of shares of stock, and the total number of shares that this corporation is authorized to issue is four hundred thousand (400,000). Upon amendment of these Articles to read as herein set forth, each outstanding share of stock is split and converted into four (4) shares.

IV

The liability of the Directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

WC03336

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EXHIBIT F
PAGE 18 OF 22

PATENT
REEL: 013429 FRAME: 0346

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A398940

FILED

in the office of the Secretary of State
of the State of CaliforniaCERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION

JAN 28 1991

March 7, 1991
MARICH FONG EU, Secretary of State

NED HOFFMAN AND ROBERT N. KATZ certify that:

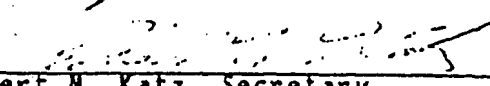
1. They are the president and the secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California corporation.

2. Article IV of the Articles of Incorporation is amended to read as follows:

The total number of shares which this corporation is authorized to issue is one million (1,000,000). All of the corporation's issued shares of stock shall be held of record by no more than thirty-five (35) persons. This corporation is a close corporation.

3. The foregoing amendments of the Articles of Incorporation have been duly approved by the Board of Directors.

4. The foregoing amendments of the Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 100,000. The number of shares voting in favor of the amendment equalled or exceeded the vote required. The percentage vote required was more than 50%.


Ned Hoffman, President
Robert N. Katz, Secretary

The undersigned declare under penalty of perjury that the matters set forth in the foregoing certificate are true of their own knowledge.

Executed at Berkeley, California, on Dec 31, 1990.


Ned Hoffman
Robert N. Katz

EXHIBIT F
PAGE 19 OF 22

PATENT
REEL: 013429 FRAME: 0347

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FILED
in the office of the Secretary of State
of the State of California
AUG 20 1990
CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION

NED HOFFMAN AND ROBERT N. KATZ certify that *March Fong Eu* ^{March Fong Eu, Secretary of State}

1. They are the president and the secretary, respectively, of SPORTSMITT INTERNATIONAL, INC., a California corporation.

2. Article I of the Articles of Incorporation is amended to read as follows:

The name of the corporation is SPORTS-MITT INTERNATIONAL, INC.

3. Article IV of the Articles of Incorporation is amended to read as follows:

The total number of shares which this corporation is authorized to issue is one hundred thousand (100,000). All of the corporation's issued share; of stock shall be held of record by no more than thirty-five (35) persons. This corporation is a close corporation.

4. The foregoing amendments of the Articles of Incorporation have been duly approved by the Board of Directors.

5. The foregoing amendments of the Articles of Incorporation have been duly approved by the required vote or shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 70,000. The number of shares voting in favor of the amendments equalled or exceeded the vote required. The percentage vote required was more than 50%.

Ned Hoffman
Ned Hoffman, President

Robert N. Katz
Robert N. Katz, Secretary

The undersigned declare under penalty of perjury that the matters set forth in the foregoing certificate are true of their own knowledge.

Executed at Berkeley, California, on *1/5*, 1990.

Ned Hoffman
Ned Hoffman

Robert N. Katz
Robert N. Katz

EXHIBIT F
PAGE 20 OF 22

PATENT
REEL: 013429 FRAME: 0348

1506878

ARTICLES OF INCORPORATION
OF
SPORTSMITT INTERNATIONAL, INC.

FILED
In the office of the Secretary of State
of the State of California

JAN 24 1980

March Fong Eu
MARCH FONG EU, Secretary of State

I.

The name of the corporation is SPORTSMITT INTERNATIONAL, INC.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of the corporation's initial agent for service of process are Robert M. Katz, 2150 Shattuck Avenue, Berkeley, California, 94704.

IV.

The total number of shares which this corporation is authorized to issue is one hundred thousand (100,000). All of the corporation's issued shares of stock shall be held of record by no more than ten (10) persons. This corporation is a close corporation.

[Signature]

The undersigned declares that the undersigned has executed these Articles of Incorporation and that this instrument is the act and deed of the undersigned.

[Signature]

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CERTIFICATE OF AMENDMENT OF
THE AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
SPORTS-MITT INTERNATIONAL, INC.

Ned Hoffman and David Silen certify that:

1. They are the President and Secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California Corporation (this "Corporation").

2. Article I of the Amended and Restated Articles of Incorporation of this Corporation is amended to read in its entirety as follows:

"I.

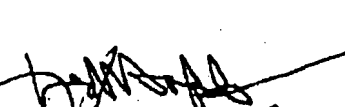
The name of this Corporation is EXCEL
INNOVATIONS, INC."

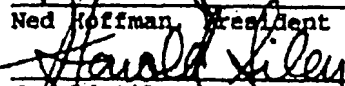
3. The foregoing amendment of the Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of this Corporation is Six Hundred Fifty-Three Thousand Seven Hundred Seventy-Six (653,776) Common Stock shares. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%).

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.

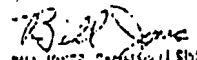
Date: March 12, 1996


Ned Hoffman, President


Harold Silen, Secretary

FILED
In the office of the Secretary of State
of the State of California

MAR 18 1996


BILL JONES, Secretary of State

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RECORDED: 02/10/2003

PATENT
REEL: 013429 FRAME: 0350

EXHIBIT F
PAGE 22 OF 22

4
Power
4/2/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

POWER TO INSPECT

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Sir:

With power of attorney from the Assignee for the below-mentioned patent
application;

Patent Application No.
10/241,374

I hereby appoint:

Sunny Downs, of Express Patents, or Hendrick Tran
as an associate, with power to inspect, copy, and receive documents, with
respect to the above-mentioned patent application.

Respectfully submitted,

Dated:

3/24/03

By:



Ned Hoffman
President, Excel Innovations, Inc.
and
Manager, Aviv LLC

03 APR -2 PM 11:31

RECEIVED
COMM. & TRADE CENTER 0603

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CONTENTS

		Date Received (Incl. C. of M.) or Date Mailed	Date Received (Incl. C. of M.) or Date Mailed
1.	Application _____ papers.		31. _____
2.	LTR: RB: Sean, Dec/Sig	10-11-02	32. _____
3.	Dec/Free/EOT	01-21-03	33. _____
4.	Power To Inspect	4/2/03	34. _____
5.	IDS	08-05-03	35. _____
6.	Power To Inspect	9/8/03	36. _____
7.	_____		37. _____
8.	_____		38. _____
9.	_____		39. _____
10.	_____		40. _____
11.	_____		41. _____
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20.	_____		50. _____
21.	_____		51. _____
22.	_____		52. _____
23.	_____		53. _____
24.	_____		54. _____

EXHIBIT G
PAGE 2 OF 2

Patent Assignment Abstract of Title**Total Assignments: 4****Application #:** 10241374 **Filing Dt:** 09/10/2002 **Patent #:** NONE **Issue Dt:****PCT #:** NONE**Publication #:** 20030105725 **Pub Dt:** 06/05**Inventor:** Ned Hoffman**Title:** Tokenless identification system for authorization of electronic transactions and electronic transmissions**Assignment: 1****Reel/Frame:** 013462/0835 **Received:** 03/07/2003**Recorded:** 03/07/2003**Mailed:** 03/11/2003 **Pa****Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).**Assignor:** INDIVOS CORPORATION**Exec Dt:** 02/03/2003**Assignee:** EXCEL INNOVATIONS, INC.708 GRAVENSTEIN HIGHWAY NORTH
SUITE 111
SEBASTOPOL, CALIFORNIA 95472**Correspondent:** INTELLECTUAL PROPERTY LAW GROUP PLLC
OTTO LEE, ESQ.
12 SOUTH FIRST STREET
12TH FLOOR
SAN JOSE, CA 95113**Assignment: 2****Reel/Frame:** 013516/0295 **Received:** 03/26/2003**Recorded:** 03/26/2003**Mailed:** 03/28/2003 **Pa****Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).**Assignor:** EXCEL INNOVATIONS, INC.**Exec Dt:** 02/03/2003**Assignee:** AVIV, LLC400 WEST THIRD STREET
SUITE D108
SANTA ROSA, CALIFORNIA 95401**Correspondent:** INTELLECTUAL PROPERTY LAW GROUP LLC
OTTO LEE, ESQ.
400 WEST THIRD STREET, SUITE D108
SANTA ROSA, CA 95401**Assignment: 3**

Reel/Frame: 013862/0618 **Received:**
08/11/2003**Recorded:**
08/11/2003**Mailed:** 08/12/2003 Pa**Conveyance:** MERGER (SEE DOCUMENT FOR DETAILS).**Assignor:** INDIVOS CORPORATION**Exec Dt:** 07/23/2003**Assignee:** INDIVOS CORPORATIONONE MARKET STREET, SPEAR TOWER, 41ST FLOOR
SAN FRANCISCO, CALIFORNIA 94105**Correspondent:** MARGER JOHNSON & MCCOLLOM, P.C.
ALEXANDER C. JOHNSON, JR.
1030 S.W. MORRISON ST.
PORTLAND, OREGON 97205**Assignment: 4****Reel/Frame:** 013933/0444 **Received:**
09/04/2003**Recorded:**
09/03/2003**Mailed:** 09/05/2003 Pa**Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).**Assignor:** INDIVOS CORPORATION**Exec Dt:** 09/03/2003**Assignee:** EXCEL INNOVATIONS, INC.708 GRAVENSTEIN HIGHWAY NORTH, SUITE 111
SEBASTOPOL, CALIFORNIA 95472**Correspondent:** INTELLECTUAL PROPERTY LAW GROUP LLP
OTTO LEE, ESQ.
400 WEST THIRD STREET
SUITE D108
SANTA ROSA, CA 95401

Search Results as of: 9/11/2003 1:14:54 P.M.

If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 703-308-9723
Web interface last modified: Oct. 5, 2002

EXHIBIT H
PAGE 2 OF 2

Docket No.	Provisional Application Serial No.	Filing Date	Application Serial No.	Filing Date	Patent No.	Issue Date	Reel/Frame (pages)	Inventor's Assignment Date	Assigned To:
8514-5			08/442,895	5/17/1995	5,613,012	3/18/1997	7567/0562 (4 pages)	5/17/1995	SmartTouch, LLC
8514-6			08/345,323	11/28/1994	5,615,277	3/25/1997	9325/0737 (3 pages)	10/22/1998	SmartTouch, Inc.
8514-7			08/739,313	10/29/1996	5,737,439	4/7/1998	8292/0624 (5 pages)	1/9/1997	SmartTouch, LLC
8514-8			08/722,629	9/27/1996	5,764,789	6/9/1998	8261/0255 (4 pages)	9/27/1996	SmartTouch, LLC
8514-9			08/818,872	3/17/1997	5,802,199	9/1/1998	8541/0709 (7 pages)	5/30/1997	SmartTouch, LLC
8514-10			08/820,008	3/18/1997	5,805,719	9/8/1998	8645/0502 (5 pages)	3/18/1997	SmartTouch, LLC
8514-11			08/687,251	7/25/1996	5,838,812	11/17/1998	8123/0336 (4 pages)	7/25/1996	SmartTouch, LLC
8514-12			08/705,399	8/29/1996	5,870,723	2/9/1999	8315/0449 (6 pages)	1/16/1997	SmartTouch, LLC
8514-13			08/902,151	7/29/1997	5,982,914	11/9/1999	8822/0659 (4 pages)	7/29/1997	SmartTouch, Inc.
8514-14			09/244,784	2/5/1999	6,012,039	1/4/2000	01170/0434 (10 pages)	9/28/2000	SmartTouch, Inc.
8514-16			09/098,318	6/16/1998	6,131,464	10/17/2000	9258/0474 (4 pages)	6/16/1998	SmartTouch, Inc.
8514-17			09/183,215	10/30/1998	6,366,682	4/2/2002	011623/0378 (5 pages)	3/5/2001	SmartTouch, Inc.
8514-18			29/097,014	11/25/1998	D425,873	5/30/2000	011292/0008 (5 pages)	11/14/2000	SmartTouch, Inc.
8514-19			09/330,253	6/10/1999	6,411,728	6/25/2002	011299/0507 (6 pages)	11/13/2000	SmartTouch, Inc.
8514-20			09/239,595	1/29/1999	6,230,148	5/8/2001	010614/0239 (8 pages)	1/29/1999	SmartTouch, Inc.
8514-21			09/239,570	1/29/1999	6,269,348	7/31/2001	010505/0282 (6 pages)	1/21/2000	SmartTouch, Inc.
8514-22			09/243,208	2/2/1999	6,192,142	2/20/2001	010894/0156 (4 pages)	7/10/2000	SmartTouch, Inc.
8514-23			09/245,501	2/5/1999	6,154,879	11/28/2000	010546/0565 (6 pages)	1/31/2000	SmartTouch, Inc.
8514-24			09/357,718	7/20/1999	6,397,198	5/28/2002	010993/0150 (5 pages)	7/24/2000	SmartTouch, Inc.
8514-25			09/398,914	9/16/1999			011057/0344 (3 pages)	8/21/2000	SmartTouch, Inc.
8514-26			09/441,107	11/16/1999			010908/0680 (3 pages)	6/27/2000	SmartTouch, Inc.
8514-50	60/208,680	5/31/2000	09/871,241	5/30/2001			011723/0657 (5 pages)	1/16/2001	SmartTouch, Inc.
8514-52			09/731,536	12/6/2000			011359/0599 (5 pages)	12/6/2000	VeriStar Corporation
8514-56			09/794,810	2/26/2001			012902/0505 (2 pages)	5/17/2002	VeriStar Corporation
8514-57			09/815,434	3/22/2001			010614/0239 (8 pages)	1/29/1999	SmartTouch, Inc.
8514-58			09/639,948	8/17/2000			010505/0282 (6 pages)	1/21/2000	SmartTouch, Inc.
8514-60			09/848,867	5/3/2001	6,581,042	6/17/2003	012900/0541 (3 pages)	5/13/2000	Indivos Corporation
8514-61			09/879,370	6/11/2001			010993/0150 (5 pages)	7/24/2000	SmartTouch, Inc.
8514-75			10/056,982	1/23/2002			7567/0562 (4 pages)	5/17/1995	SmartTouch, LLC
8514-87			10/120,328	4/10/2002					
8514-89			10/241,374	9/10/2002					
8514-100			09/215,058	12/17/1998			012722/0900 (5 pages)	3/22/2002	SmartTouch, Inc.
8514-101			10/114,587	4/1/2002	6,594,376	7/15/2003	011623/0378 (5 pages)	3/5/2001	SmartTouch, Inc.
8514-102			10/143,430	5/9/2002	6,591,002	7/8/2003	011299/0507 (6 pages)	11/13/2000	SmartTouch, Inc.
8514-110			10/619,990	7/14/2003			011623/0378 (5 pages)	3/5/2001	SmartTouch, Inc.

Docket No.	Transferred From:	Transferred To:	Reel/Frame (pages)	Recorded at:	Date	Transferred From:	Transferred To:	Reel/Frame (pages)	Recorded at:	Date
8514-5	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)		10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-6						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-7	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)		10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-8	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)		10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-9	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)		10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-10	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)		10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-11	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)		10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-12	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)		10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-13						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-14						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-16						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-17						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-18						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-19						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-20						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-21						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-22						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-23						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-24						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-25						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-26						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-50						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-52						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-56						SmartTouch, Inc.	VeriStar Corporation	012902/0554 (21 pages)		5/17/2002
8514-57										
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8514-60						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-61						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-75										
8514-87										
8514-89										
8514-100						SmartTouch, Inc.	VeriStar Corporation	012786/0440 (21 pages)		3/22/2002
8514-101						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-102						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001
8514-110						SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)		7/24/2001

Docket No.	Notes:
8514-5	
8514-6	
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8514-26	
8514-50	Expressly abandoned in favor of 09/05, 434 (8514-57). <i>in correct</i> <i>Ag</i>
8514-52	
8514-56	
8514-57	
8514-58	
8514-60	Relies on assignment in 09/239,595 (8514-20).
8514-61	Relies on assignment in 09/239,570 (8514-21).
8514-75	
8514-87	Relies on assignment from 09/357,718 (8514-24).
8514-89	No original assignment recorded. The listed recording is for 08/442,895 (8514-5), from where the specification is taken. We also rely on the assignment in 09/639,948 (8514-58) (the immediate parent application).
8514-100	
8514-101	Relies on assignment in 09/183,215 (8514-17).
8514-102	Relies on assignment in 09/330,253 (8514-19).
8514-110	Relies on assignment in 09/183,215 (8514-17).

**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JANUARY 05, 2006

PTAS

500069243A

ALEXANDER C. JOHNSON, JR.
210 SW MORRISON STREET
SUITE 400
PORTLAND, OR 97204

500069243A

UNITED STATES PATENT AND TRADEMARK OFFICE
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RECORDATION DATE: 01/05/2006

REEL/FRAME: 016976/0131
NUMBER OF PAGES: 55

BRIEF: JUDGMENT OF PATENT OWNERSHIP
DOCKET NUMBER: 8514-1

ASSIGNOR:

EXCEL INNOVATIONS, INC.

DOC DATE: 05/27/2004

ASSIGNEE:

INDIVOS CORPORATION, A WHOLLY
OWNED SUBSIDIARY OF SOLIDUS
NETWORKS, INC., DBA PAY BY TOUCH
101 SECOND STREET
SUITE 1500
SAN FRANCISCO, CALIFORNIA 94105

Exhibit c

016976/0131 PAGE 2

SERIAL NUMBER: 10241374 FILING DATE: 09/10/2002
PATENT NUMBER: ISSUE DATE:
TITLE: TOKENLESS IDENTIFICATION SYSTEM FOR AUTHORIZATION OF ELECTRONIC
TRANSACTIONS AND ELECTRONIC TRANSMISSIONS

SERIAL NUMBER: 09871241 FILING DATE: 05/30/2001
PATENT NUMBER: ISSUE DATE:
TITLE: BIOMETRIC FINANCIAL TRANSACTION SYSTEM AND METHOD

SERIAL NUMBER: 10619990 FILING DATE: 07/14/2003
PATENT NUMBER: 6985608 ISSUE DATE: 01/10/2006
TITLE: TOKENLESS ELECTRONIC TRANSACTION SYSTEM

SERIAL NUMBER: 08345523 FILING DATE: 11/28/1994
PATENT NUMBER: 5615277 ISSUE DATE: 03/25/1997
TITLE: TOKENLESS SECURITY SYSTEM FOR AUTHORIZING ACCESS TO A SECURED
COMPUTER SYSTEM

SERIAL NUMBER: 08705399 FILING DATE: 08/29/1996
PATENT NUMBER: 5870723 ISSUE DATE: 02/09/1999
TITLE: TOKENLESS BIOMETRIC TRANSACTION AUTHORIZATION METHOD AND SYSTEM

SERIAL NUMBER: 08818872 FILING DATE: 03/17/1997
PATENT NUMBER: 5802199 ISSUE DATE: 09/01/1998
TITLE: USE SENSITIVE IDENTIFICATION SYSTEM

SERIAL NUMBER: 09098318 FILING DATE: 06/16/1998
PATENT NUMBER: 6131464 ISSUE DATE: 10/17/2000
TITLE: PRESSURE SENSITIVE BIOMETRIC INPUT APPARATUS

SERIAL NUMBER: 09239595 FILING DATE: 01/29/1999
PATENT NUMBER: 6230148 ISSUE DATE: 05/08/2001
TITLE: TOKENLESS BIOMETRIC ELECTRIC CHECK TRANSACTION-

SERIAL NUMBER: 09245501 FILING DATE: 02/05/1999
PATENT NUMBER: 6154879 ISSUE DATE: 11/28/2000
TITLE: TOKENLESS BIOMETRIC ATM ACCESS SYSTEM

SERIAL NUMBER: 09731536 FILING DATE: 12/06/2000
PATENT NUMBER: 6950810 ISSUE DATE: 09/27/2005
TITLE: TOKENLESS BIOMETRIC ELECTRONIC FINANCIAL TRANSACTIONS VIA A THIRD
PARTY IDENTICATOR

SERIAL NUMBER: 09848867 FILING DATE: 05/03/2001
PATENT NUMBER: 6581042 ISSUE DATE: 06/17/2003
TITLE: TOKENLESS BIOMETRIC ELECTRONIC CHECK TRANSACTIONS

SERIAL NUMBER: 10114587 FILING DATE: 04/01/2002
PATENT NUMBER: 6594376 ISSUE DATE: 07/15/2003
TITLE: TOKENLESS ELECTRONIC TRANSACTION SYSTEM

016976/0131 PAGE 3

SERIAL NUMBER: 08442895 FILING DATE: 05/17/1995
PATENT NUMBER: 5613012 ISSUE DATE: 03/18/1997
TITLE: TOKENLESS IDENTIFICATION SYSTEM FOR AUTHORIZATION OF ELECTRONIC
TRANSACTIONS AND ELECTRONIC TRANSMISSIONS

SERIAL NUMBER: 08722629 FILING DATE: 09/27/1996
PATENT NUMBER: 5764789 ISSUE DATE: 06/09/1998
TITLE: TOKENLESS BIOMETRIC ATM ACCESS SYSTEM

SERIAL NUMBER: 08820008 FILING DATE: 03/18/1997
PATENT NUMBER: 5805719 ISSUE DATE: 09/08/1998
TITLE: TOKENLESS IDENTIFICATION OF INDIVIDUALS

SERIAL NUMBER: 09183215 FILING DATE: 10/30/1998
PATENT NUMBER: 6366682 ISSUE DATE: 04/02/2002
TITLE: TOKENLESS ELECTRONIC TRANSACTION SYSTEM

SERIAL NUMBER: 09243208 FILING DATE: 02/02/1999
PATENT NUMBER: 6192142 ISSUE DATE: 02/20/2001
TITLE: TOKENLESS BIOMETRIC ELECTRONIC STORED VALUE TRANSACTIONS

SERIAL NUMBER: 09330253 FILING DATE: 06/10/1999
PATENT NUMBER: 6411728 ISSUE DATE: 06/25/2002
TITLE: ASSOCIATION OF FINGER PORES AND MACROFEATURES FOR IDENTIFICATION OF
INDIVIDUALS

SERIAL NUMBER: 09794810 FILING DATE: 02/26/2001
PATENT NUMBER: 6980670 ISSUE DATE: 12/27/2005
TITLE: BIOMETRIC TOKENLESS ELECTRONIC REWARDS SYSTEM AND METHOD

SERIAL NUMBER: 10120328 FILING DATE: 04/10/2002
PATENT NUMBER: 6920435 ISSUE DATE: 07/19/2005
TITLE: TOKENLESS BIOMETRIC ELECTRONIC TRANSACTIONS USING AN AUDIO
SIGNATURE TO IDENTIFY THE TRANSACTION PROCESSOR

SERIAL NUMBER: 08687251 FILING DATE: 07/25/1996
PATENT NUMBER: 5838812 ISSUE DATE: 11/17/1998
TITLE: TOKENLESS BIOMETRIC TRANSACTION AUTHORIZATION SYSTEM

SERIAL NUMBER: 08739313 FILING DATE: 10/29/1996
PATENT NUMBER: 5737439 ISSUE DATE: 04/07/1998
TITLE: ANTI-FRAUD BIOMETRIC SCANNER THAT ACCURATELY DETECTS BLOOD FLOW

SERIAL NUMBER: 08902151 FILING DATE: 07/29/1997
PATENT NUMBER: 5982914 ISSUE DATE: 11/09/1999
TITLE: IDENTIFICATION OF INDIVIDUALS FROM ASSOCIATION OF FINGER PORES AND
MACROFEATURES

SERIAL NUMBER: 09239570 FILING DATE: 01/29/1999
PATENT NUMBER: 6269348 ISSUE DATE: 07/31/2001
TITLE: TOKENLESS BIOMETRIC ELECTRONIC DEBIT AND CREDIT TRANSACTIONS

016976/0131 PAGE 4

SERIAL NUMBER: 09244784 FILING DATE: 02/05/1999
PATENT NUMBER: 6012039 ISSUE DATE: 01/04/2000
TITLE: TOKENLESS BIOMETRIC ELECTRONIC REWARDS SYSTEM

SERIAL NUMBER: 09357718 FILING DATE: 07/20/1999
PATENT NUMBER: 6397198 ISSUE DATE: 05/28/2002
TITLE: TOKENLESS BIOMETRIC ELECTRONIC TRANSACTIONS USING AN AUDIO
SIGNATURE TO IDENTIFY THE TRANSACTION PROCESSOR

SERIAL NUMBER: 09815434 FILING DATE: 03/22/2001
PATENT NUMBER: 6879966 ISSUE DATE: 04/12/2005
TITLE: TOKENLESS BIOMETRIC ELECTRONIC FINANCIAL TRANSACTIONS VIA A THIRD
PARTY IDENTICATOR

SERIAL NUMBER: 09879370 FILING DATE: 06/11/2001
PATENT NUMBER: 6662166 ISSUE DATE: 12/09/2003
TITLE: TOKENLESS BIOMETRIC ELECTRONIC DEBIT AND CREDIT TRANSACTIONS

SERIAL NUMBER: 10143430 FILING DATE: 05/09/2002
PATENT NUMBER: 6591002 ISSUE DATE: 07/08/2003
TITLE: ASSOCIATION OF FINGER PORES AND MACROFEATURES FOR IDENTIFICATION OF
INDIVIDUALS

SERIAL NUMBER: 29097014 FILING DATE: 11/25/1998
PATENT NUMBER: D425873 ISSUE DATE: 05/30/2000
TITLE: DATA ENTRY PAD

MARGARET LASALLE, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

PATENT ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

01/05/2006
500069243

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

Judgment of Patent Ownership

CONVEYING PARTY DATA

Name	Execution Date
EXCEL INNOVATIONS, INC.	05/27/2004

RECEIVING PARTY DATA

Name:	INDIVOS CORPORATION, a wholly owned subsidiary of SOLIDUS NETWORKS, INC., dba PAY BY TOUCH
Street Address:	101 Second Street
Internal Address:	Suite 1500
City:	San Francisco
State/Country:	CALIFORNIA
Postal Code:	94105

PROPERTY NUMBERS Total: 30

Property Type	Number
Patent Number:	5615277
Patent Number:	5870723
Patent Number:	5802199
Patent Number:	6131464
Patent Number:	6230148
Patent Number:	6154879
Patent Number:	6950810
Patent Number:	6581042
Patent Number:	6594376
Application Number:	10241374
Patent Number:	5613012
Patent Number:	5764789
Patent Number:	5805719

OP \$1200.00 5615277

Patent Number:	6366682
Patent Number:	6192142
Patent Number:	6411728
Patent Number:	6980670
Application Number:	09871241
Patent Number:	6920435
Application Number:	10619990
Patent Number:	5838812
Patent Number:	5737439
Patent Number:	5982914
Patent Number:	6269348
Patent Number:	6012039
Patent Number:	6397198
Patent Number:	6879966
Patent Number:	6662166
Patent Number:	6591002
Patent Number:	D425873

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ATTORNEY DOCKET NUMBER: 8514-1

NAME OF SUBMITTER: Alexander C. Johnson, Jr.

Total Attachments: 52

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EXCEL INNOVATIONS, INC.,

No. C-03-3125 MMC

Plaintiff,

**ORDER DENYING PLAINTIFF'S MOTION
AND GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON THE ISSUE OF PATENT
OWNERSHIP**

v.

INDIVOS CORPORATION and SOLIDUS
NETWORKS, INC.,

(Docket Nos. 139, 178.)

Defendants

Before the Court are two related motions: (1) the motion filed March 12, 2004 by plaintiff Excel Innovations, Inc. ("Excel") for partial summary judgment on the issue of ownership of United States Patents Nos. 5,615,277 and 5,613,012, and (2) the motion filed April 2, 2004 by defendants Indivos Corporation ("Indivos") and Solidus Networks, Inc. ("Solidus") for partial summary judgment on the issue of ownership of all fifteen patents at issue in this action. Counterdefendants Ned Hoffman ("Hoffman") and Aviv LLC ("Aviv") have filed a notice of joinder in Excel's motion. The Court having considered the evidence and arguments presented in the papers, and the arguments of counsel at the May 14, 2004 hearing, and for the reasons set forth below, Excel's motion is DENIED and defendants' motion is GRANTED.

//

BACKGROUND

A. General Background

In this action, Excel alleges causes of action for patent infringement and breach of contract.¹ Excel alleges that defendants are infringing 15 patents in the field of tokenless biometric computer systems, which are identified in the complaint as:

1. United States Patent No. 6,581,042, "Tokenless biometric electronic check transactions" ("the '042 patent");

2. United States Patent No. 6,397,198, "Tokenless biometric electronic transactions using an audio signature to identify the transaction processor" ("the '198 patent");

3. United States Patent No. 6,366,682, "Tokenless electronic transaction system" ("the '682 patent");

4. United States Patent No. 6,269,348, "Tokenless biometric electronic debit and credit transactions" ("the '348 patent");

5. United States Patent No. 6,230,148, "Tokenless biometric electric check transaction" ("the '148 patent");

6. United States Patent No. 6,192,142, "Tokenless biometric electronic stored value transactions" ("the '142 patent");

7. United States Patent No. 6,154,879, "Tokenless biometric ATM access system" ("the '879 patent");

8. United States Patent No. 6,012,039, "Tokenless biometric electronic rewards system" ("the '039 patent");

9. United States Patent No. 5,870,723, "Tokenless biometric transaction authorization method and system" ("the '723 patent");

10. United States Patent No. 5,838,812, "Tokenless biometric transaction authorization system" ("the '812 patent");

11. United States Patent No. 5,805,719, "Tokenless identification of individuals" ("the

¹ The operative complaint is Excel's First Amended Complaint ("FAC"), filed August 15, 2003.

1 '719 patent);

2 12. United States Patent No. 5,802,199, "Use sensitive identification system" ("the
3 '199 patent");

4 13. United States Patent No. 5,764,789, "Tokenless biometric ATM access system"
5 ("the '789 patent");

6 14. United States Patent No. 5,615,277, "Tokenless security system for authorizing
7 access to a secured computer system" ("the '277 patent");

8 15. United States Patent No. 5,613,012, "Tokenless identification system for
9 authorization of electronic transactions and electronic transmissions" ("the '012 patent).
10 (See First Amended Complaint ("FAC") ¶ 44.)

11 The inventors and assignees of the patents at issue in this lawsuit are identified in
12 the patents, as follows:

13 '012 patent – Inventors: Hoffman, David Pare ("Pare"), and Jonathan Lee ("Lee");
14 Assignee: SmartTouch LLC;

15 '277 patent – Inventor: Hoffman; Assignee: None;

16 '789 patent – Inventors: Pare, Hoffman, and Lee; Assignee: SmartTouch LLC;

17 '199 patent – Inventors: Pare, Hoffman, and Lee; Assignee: SmartTouch LLC;

18 '719 patent – Inventors: Pare, Hoffman, and Lee; Assignee: SmartTouch LLC;

19 '812 patent – Inventors: Pare, Lee, and Hoffman; Assignee: SmartTouch LLC;

20 '723 patent – Inventors: Pare, Hoffman, and Lee; Assignee: None;

21 '039 patent – Inventors: Hoffman, Pare, and Lee; Assignee: SmartTouch, Inc.;

22 '682 patent – Inventors: Hoffman, Pare, and Lee; Assignee: Indivos;

23 '148 patent – Inventors: Pare, Hoffman, and Lee; Assignee: Veristar Corporation
24 ("Veristar");

25 '348 patent – Inventors: Pare, Hoffman, and Lee; Assignee: Veristar;

26 '142 patent – Inventors: Pare, Hoffman, and Lee; Assignee: SmartTouch, Inc.;

27 '879 patent – Inventors: Pare, Hoffman, and Lee; Assignee: SmartTouch, Inc.;

28 '198 patent – Inventors: Hoffman, Pare, Lee, and Philip Lapsley ("Lapsley");

1 Assignee: Indivos;

2 '042 patent – Inventors: Pare, Hoffman, and Lee; Assignee: Indivos.

3 (See Def. Ev. 1A through 15A, filed August 29, 2003, at 1.)

4 In addition to its claims for patent infringement, Excel asserts a claim against
5 defendants for breach of contract, in which Excel alleges that defendants breached a
6 patent licensing agreement with Excel. (See FAC ¶¶ 167-171.) Excel alleges that it initially
7 owned the subject patents as a result of an employment agreement with inventor Hoffman
8 and consulting agreements with inventors Pare, Lee, and Lapsley. (See FAC ¶ 10-14.) In
9 May 1995, Excel and Hoffman allegedly founded SmartTouch, LLC, which was later known
10 as Veristar, and is now known as Indivos. (See FAC ¶ 15.) According to the complaint,
11 Indivos was formed “for the purpose of licensing Excel’s Invention and commercializing the
12 Invention and the improvements thereon.” (See id.) Excel alleges that, in May 1995, it
13 “entered into an agreement with Indivos [hereafter, “IP-Patent License”], wherein Excel
14 granted to Indivos a non-exclusive, non-assignable license to Excel’s intellectual property
15 relating to the Invention, including patents, and permitting Indivos to have a conditional
16 assignment on this intellectual property.” (See id. ¶ 16.) Excel alleges that Indivos
17 “breached the IP-Patent License,” (see id. ¶¶ 36-42), and that as a result, title in the subject
18 patents reverted to Excel. (See id. ¶ 43.)

19 Defendants assert numerous counterclaims against Excel, Hoffman, and Aviv.
20 Defendants’ first counterclaim is for declaratory relief with respect to ownership of the
21 patents. (See Answer and Counterclaims, filed Nov. 6, 2003, ¶¶ 52-56.) Defendants’
22 second through sixteenth counterclaims are for patent infringement and inducing
23 infringement of the same fifteen patents that Excel contends defendants are infringing.
24 (See id. ¶¶ 57-146.) Defendants also assert counterclaims for intentional interference with
25 prospective economic advantage, violation of § 43(a) of the Lanham Act (15 U.S.C.
26 § 1125(a)), and business disparagement/slander of title. (See id. ¶¶ 147-165.) Finally,
27 defendants assert a counterclaim for conspiracy to commit the other alleged violations.
28 (See id. ¶¶ 166-169.)

1 In Excel's reply to defendants' counterclaims, it asserts new counterclaims of its
2 own. In particular, Excel asserts counterclaims against defendants for declaratory relief
3 with respect to patent ownership, breach of contract (failure of consideration), breach of
4 contract (frustration of purpose), breach of contract (breach of fiduciary duty), and fraud.
5 (See Excel's Reply to Counterclaims, filed Dec. 1, 2003, ¶¶ 183-197.)

6 **B. Summary of Chain of Title Evidence**

7 For purposes of determining whether a material dispute of fact exists as to the
8 ownership of the subject patents, the Court first looks to the evidence of events relevant to
9 a determination of the chain of title.²

10 **1. Background**

11 Hoffman is the founder and president of plaintiff Excel. (See Hoffman Decl. in
12 Opposition to Motion to Dismiss and in Support of Cross-Motion for Summary Judgment,
13 filed Sept. 12, 2003 ("Hoffman 9/12/03 Decl."), ¶ 1.) Excel has been known previously as
14 Omnilock, Inc. ("Omnilock") and Sports-Mitt International, Inc. ("SportsMitt"). (See id. ¶ 2.)
15 On November 30, 1995, Omnilock and Sports-Mitt merged. (See id., Ex. A (containing a
16 certificate of ownership, filed November 30, 1995 with the California Secretary of State,
17 noting that Omnilock merged into Sport-Mitt)). On April 12, 1996, Sports-Mitt changed its
18 name to Excel. (See id., Ex. A (containing Sports-Mitt's amended articles of incorporation
19 changing the name of the corporation to Excel)).

20 In 1995, Hoffman, Lee and Pare co-founded defendant Indivos, which was then
21 known as SmartTouch LLC. (See Lee Decl. ¶¶ 1, 5-6; Pare Decl. ¶¶ 1, 5-6.) In 1997,
22 SmartTouch LLC incorporated as SmartTouch, Inc. (See Goldberg Decl. ¶ 1.) In 2000,
23 SmartTouch, Inc. was renamed Veristar. (See id.) In 2001, Veristar was renamed Indivos.
24 (See id.) Indivos later merged into defendant Solidus. (See Silen Decl. ¶¶ 14-15.)

25 //

26 //

27
28 ² The Court relies on this evidence only to the extent set forth, infra, in the
"Discussion" section.

2. Excel Employment and Consulting Agreements

a. Hoffman-Omnilock – 2/17/94

On February 17, 1994, Hoffman entered into an employment agreement ("Hoffman Employment Agreement") with Excel's predecessors, Omnilock and Sports-Mitt. (See Hoffman 9/12/03 Decl. ¶¶ 3, 7; Slater Decl. Ex. 4.) That agreement defines "work product" as Hoffman's "creations which lend themselves to protection by patents" (See id. § 2.03(a).) The agreement also provides:

Employer shall have the right of first option on all Employee Work Product. Employer shall lose its first option on any Employee Work Product at the conclusion of either: (i) Twelve (12) months from the date of Employee's creation of such Work Product in the event that the Work Product has not been protected by a pending patent . . . including having been perfected to the point that such patent . . . applications . . . can be filed in good faith; (ii) Twenty-Four (24) months from the date of Employee's creation of such Work Product in the event that the Work Product has not been the subject of an executed licensing agreement with a bona fide third party. In the event that Employer's first option expires with regard to any Employee Work Product, such Work Product shall become the sole and exclusive property of Employee. If the Employer's first option rights have not expired on an Employee Work Product, the same shall belong to and be the sole and exclusive property of Employer.

(Id. § 2.03(c).)

b. Pare and Lee - Omnilock – 12/9/94

On December 9, 1994, Pare and Lee entered into a consulting agreement with Excel's predecessor, Omnilock. (See Lee Decl. ¶ 4 and Ex. 1; Pare Decl. ¶ 4 and Ex. 1.) The consulting agreement states that Omnilock "is the sole inventor of and sole owner of the entire rights, title and interest in and to the United States Pending Patent for Tokenless Security System for Authorizing Access to a Secured Computer, . . . including any derivative patent and/or trademark applications, any issued patents based thereupon or derived therefrom, any continuations, any continuations-in-part, any re-issues, and any foreign counterparts thereof[.]" (See Lee Decl. Ex. 1 at 1.) Pare, Lee, and Omnilock agreed that Pare and Lee would "execute the research and development of the Technology" in exchange for "a percent in the royalties that may eventually accrue from the license of any patent issuing from and based on the Technology." (See id. at 1.) Pare,

1 Lee, and Omnilock also agreed that all "work product," defined as "further research,
2 re-design, re-engineering, improvements and changes" to the technology, "shall be: a)
3 reported immediately and in its entirety to [Omnilock]; and, b) the sole property of
4 [Omnilock] and shall be owned wholly by [Omnilock]." (See id. at 2.) The parties also
5 agreed that Omnilock "retains full and exclusive control of, and shall bear all expenses of,
6 the filing and prosecution of intellectual property applications including applications for
7 patents . . . covering said Technology." (See id.) The agreement was signed by Pare, Lee,
8 and "Ned Hoffman, President." (See id. at 3.)

9 Lee and Pare both testified at deposition that they understood that, pursuant to their
10 consulting agreement with Omnilock, all of the work product they created would be owned
11 by Excel. (See Stamp Decl. Ex. 7 (Lee Dep.) at 142:9-16; Ex. 8 (Pare Dep.) at 119:23-
12 120:22.)

13 **c. Lapsley - Omnilock - 3/7/95**

14 On March 7, 1995, Lapsley entered into a similar consulting agreement with
15 Omnilock to "execute the research and development" of the technology embodied in
16 Omnilock's then-pending patent for "Tokenless Security System for Authorizing Access to a
17 Secured Computer." (See Hoffman 9/12/03 Decl. ¶ 3; Slater Decl. Ex. 54.) The parties
18 defined "work product" as "further research, re-design, re-engineering, improvements and
19 changes" to the technology, and agreed that all "work product" would be "the sole property
20 of Company and shall be wholly owned by Company." (See id. at 1.)

21 **3. Hoffman Memo - 9/22/94**

22 On September 22, 1994, Hoffman drafted a memorandum, entitled "Print Money; A
23 New, Patentable Technology for Consumer Financial Transactions," which described work
24 product he had created during his employment with Excel. (See Stamp Decl. Ex. 2.) David
25 Mendelsohn ("Mendelsohn"), Excel's former Chairman of the Board, testified at deposition
26 that Hoffman disclosed the memo to Excel, and Excel authorized him to spend \$500 to
27 develop the idea further. (See Stamp Decl. Ex. 3 (Mendelsohn Dep.) at 119:22-121:5.)
28 Mendelsohn further testified: "Hoffman wanted to pursue patent applications . . . for

1 everything that he had ever thought about, and we – and I believe that this was all part of
2 that employment agreement where Excel had the first option or first right of refusal or
3 whatever you want to call it to approve of the exploitation of any ideas that he might have,
4 and if we didn't approve of them and approve the funds to pursue it, then he was at liberty
5 to go pursue it himself." (See id. at 138:14-24.)

6 **4. First Patent Application – 11/28/94**

7 On November 28, 1994, Hoffman filed United States Patent Application No. 345,523,
8 which issued as the '277 patent, entitled "Tokenless Security System For Authorizing
9 Access to a Secured Computer System," on March 25, 1997. (See Stamp Decl. Ex. 4 ('277
10 patent)). Mendelsohn believes Excel paid the filing fee. (See Stamp Decl. Ex. 3
11 (Mendelsohn Dep.) at 148:14-23.)

12 In connection with that patent application, Hoffman filed with the PTO a verified
13 statement claiming small entity status as an independent inventor. (See Slater Decl. Ex. 7.)
14 In that statement, Hoffman was asked to identify "[e]ach person, concern or organization to
15 which [he had] assigned, granted, conveyed, or licensed or [was] under an obligation under
16 contract or law to assign, grant, convey, or license any rights in the invention." (See id.) In
17 response, Hoffman checked a box stating that "no such person, concern, or organization"
18 existed. (See id.)

19 **5. Agreement between Pare, Lee, and Omnilock to Form**
20 **SmartTouch LLC – 3/30/95**

21 According to Pare and Lee, the focus of their work with Hoffman and Omnilock "was
22 to develop a biometric system that would recognize an individual's fingerprint so that, for
23 example, an individual could pay for an item at a store by using his or her fingerprint rather
24 than a credit card." (See Lee Decl. ¶ 3; Pare Decl. ¶ 3.) In early 1995, Hoffman, Pare and
25 Lee agreed to found a new company that "would own the biometric patents and develop
26 and market the biometric products." (See Lee Decl. ¶ 5; Pare Decl. ¶ 5.)

27 On March 30, 1995, Pare, Lee and Omnilock entered into a letter of agreement,
28 signed by Pare, Lee and "Ned Hoffman, President," in which they agreed that if the new

1 company ("Newco") was "formed dedicated to commercializing the Technology," Pare and
2 Lee would "receive an equity interest in Newco representing twenty percent (20%) of all of
3 the outstanding shares." (See Lee Decl. ¶ 5 and Ex. 2; Pare Decl. ¶ 5 and Ex. 2.) Pare
4 and Lee agreed to provide consulting services to Omnilock and Newco on an ongoing
5 basis. (See Lee Decl. Ex. 2; Pare Decl. Ex. 2.)

6 **6. SmartTouch LLC Articles Of Organization – 5/8/95**

7 The Articles of Organization for SmartTouch LLC were filed with the California
8 Secretary of State on May 8, 1995. (See Lee Decl. ¶ 6; Pare Decl. ¶ 6; see also Slater
9 Decl. Ex. 56.) Attached to the Articles of Organization is an operating agreement for
10 SmartTouch LLC dated "as of May 16, 1995." (See id.) A May 12, 1995 letter from
11 Hoffman's counsel, Thomas A. Maier ("Maier") of the law firm of Pezzola & Reinke, states
12 that the May 16, 1995 Operating Agreement filed with the Articles of Organization is a draft
13 agreement. (See Slater Supp. Decl. Ex. E.) In that letter, Maier states: "Because the
14 original members of SmartTouch will be limited to you and Omnilock, we should be able to
15 customize the operating agreement fairly easily after the existing technology is transferred
16 to SmartTouch but before additional members are admitted." (See id.)

17 The draft operating agreement submitted to the Secretary of State is signed by "Ned
18 Hoffman, Its President" for Omnilock and by Hoffman separately on his own behalf. (See
19 Slater Decl. Ex. 56 at 24.) Pursuant to the draft operating agreement, Omnilock initially
20 was to own 99% of SmartTouch LLC and Hoffman owned the remaining 1%. (See id. at 5
21 § 1.26.) Hoffman's initial contribution to SmartTouch LLC was to consist of \$100, while
22 Omnilock's initial contribution was to consist of "that property more fully described on
23 Exhibit A." (See id. at 7 § 3.2.) Exhibit A of that draft agreement states in its entirety:

24 DESCRIPTION OF PROPERTY CONTRIBUTED

25 [DESCRIBE PATENT PROPERTY RIGHTS AND OTHER PROPERTY
26 RIGHTS TO FINGERPRINT TECHNOLOGY]

27 [FIFTY THOUSAND DOLLARS]

28 (See id. Ex. A.) The copy of the draft agreement attached to Maier's May 12, 1995 letter to

1 Hoffman eliminates the reference to \$50,000, and with respect to the property to be
2 contributed by Omnilock states "[Describe Patent and Other Property Rights to Be
3 Transferred]." (See Slater Supp. Decl. Ex. E.)

4 **7. IP-Patent License – 5/8/95**

5 Hoffman attests that Omnilock and SmartTouch LLC entered into an IP-Patent
6 License on May 8, 1995 with respect to "certain rights and interest in and to Ned Hoffman's
7 Tokenless Biometric Computer System Invention." (Hoffman 9/12/03 Decl. ¶ 4.) The
8 document addresses "Ned Hoffman's tokenless system using biometrics to authorize
9 access to computers for purpose of conducting electronic communications, including
10 transmissions and financial transactions, including but not limited to" the technology
11 described in Hoffman's September 22, 1994 "Print Money" memorandum and all work
12 product by Hoffman, Pare and Lee pursuant to their employment and consulting
13 agreements with Omnilock. (See Slater Decl. Ex. 24 at 1-2, § 1.6.)

14 The document states that Hoffman previously had granted Omnilock "an exclusive,
15 non-transferable license to the Invention," and that Omnilock has Hoffman's consent to
16 grant a non-exclusive license to SmartTouch LLC. (See id. at 2, § 3.1.) Pursuant to the
17 document, Omnilock granted to SmartTouch LLC "[a] non-exclusive, non-transferable,
18 conditional sublicense to the Invention, to make, use and sell the Invention throughout the
19 United States and the world" and the permission to have Hoffman, Pare and Lee
20 "conditionally assign patents to SmartTouch," with the restriction that termination of the
21 agreement pursuant to Section 6 thereof "shall result in the immediate termination of both
22 said Permission and of any/all said conditional assignments, whereby any/all such
23 conditional assignments are automatically and immediately rescinded." (See id. at 2,
24 § 2.1.)

25 Section 6 of the document allows for termination of the agreement in the event of an
26 intentional or unintentional breach by either party. (See id. at 3-4, § 6.) Section 4 sets forth
27 performance guarantees, by which SmartTouch agrees to use its best efforts to generate at
28 least \$20 million in annual sales from the invention and to pay Omnilock at least \$20 million

1 in cash resulting from the commercialization of the invention, within six years of the
2 effective date of the agreement. (See id. at 3, § 4.) The IP-Patent License also provides
3 that "all Work Product shall revert immediately, unconditionally and completely to Omnilock
4 in the event of a material breach by SmartTouch of any term or provision in this Agreement
5" (See id. at 4, § 6.5.) It further provides: "In such event, all conditional assignments
6 pursuant Section 2.1.2. . . are automatically and immediately rescinded, and SmartTouch
7 hereby automatically and irrevocably designates and appoints Omnilock and its duly
8 authorized officers and agents as its agent and attorney in fact, to act for and in behalf of
9 SmartTouch, to execute and file with the Patent and Trademark Office any re-recording of
10 any/all such assignments, and to do all other lawfully permitted acts to further the
11 application for, prosecution, issuance, maintenance or transfer of letters patent . . . with the
12 same legal force and effect as if originally executed by SmartTouch." (Id.)

13 The IP-Patent License is signed by "Ned Hoffman, President" on behalf of Omnilock,
14 and by "Ned Hoffman, Manager" on behalf of SmartTouch LLC, and is witnessed by Ali
15 Kamarei ("Kamarei"), Esq. (See id. at 6.) Hoffman attests that the IP-Patent License was
16 negotiated between Maier on behalf of Omnilock/Excel and Kamarei on behalf of
17 SmartTouch/Indivos.³ (See Hoffman 9/12/03 Decl. ¶ 10.) Hoffman attests that at the time
18 the agreement was signed, he was the "sole executive at Excel empowered to sign on
19 behalf of Excel for licensing its inventions" and "the sole Manager and in fact the only
20 individual member of Indivos (then in its early LLC form), thus being the only person
21 empowered to sign on behalf of Indivos for any contract[.]" (See Hoffman 10/10/03 Rep.
22 Decl. ¶ 8.)

23 Attached to the IP-Patent License, as addenda, are two letters from Hoffman to
24 Mendelsohn, both of which are dated May 8, 1995. (See Manual Refiling of IP Patent
25 License With Addenda, filed Sept. 19, 2003, Exs. 6 and 7.) In the first letter, Hoffman
26

27 ³ As noted, Maier was an attorney with the law firm of Pezzola & Reinke. Kamarei
28 was SmartTouch/Indivos' patent attorney and corporate counsel. (See Goldberg Decl.
¶ 10; Ginsburg Decl. ¶ 4.)

1 "confirms [his] understanding" that his February 17, 1994 employment agreement
2 automatically guarantees for Employer:

3 (i) Employer's right of exclusive, non-transferable first option license to
4 make, use and sell all Employee Work Product worldwide, and;

5 (ii) Employer's ownership rights of all Employee Work Product
6 pursuant to Section 2.03 therein, ensuring said Employee Work Product is the
exclusive and sole property of Employer.

7 (See id. Ex. 6.) In the second letter, Hoffman "confirms [his] express consent" that
8 "Employer has right to grant non-exclusive, non-transferable conditional sublicenses on any
9 Employee Work Product." (See id. Ex. 7.)

10 Mendelsohn testified at deposition that he was aware of a license agreement
11 between Omnilock and SmartTouch in 1995. (See Stamp Decl. Ex. 3 (Mendelsohn Dep.)
12 at 12:2-7.) Mendelsohn states that, shortly after SmartTouch was formed: "[he] asked if
13 there had been an agreement made from Omnilock to SmartTouch granting the patents,
14 the license for the patents, and [he] was assured that there had been." (See id. at 12:9-
15 19.) He was concerned that "it would be very difficult to raise money and, for SmartTouch,
16 unless there was clear title to the patent work that they were relying upon to commercialize
17 their services." (See id. at 13:4-7.) Mendelsohn stated that his "interpretation of clear title
18 would have been unrestricted rights to use it . . . in perpetuity." (See id. 13:8-12.)

19 Mendelsohn also testified, however, that he did not recall if he had ever seen the
20 May 8, 1995 IP-Patent License prior to his preparation for his deposition. (See id. at
21 147:22-148:2.) In a declaration filed in an earlier state court action, Mendelsohn attested
22 that he had never seen any sublicense between Excel and SmartTouch, was never made
23 aware of it during his years of service on Excel's Board of Directors, and did not believe it
24 existed. (See Slater Decl. Ex. 53 ¶ 23.)

25 Kamarei testified that the negotiations concerning the May 8, 1995 IP-Patent
26 License occurred over a period of a month or two, but they "were not daily negotiations"
27 and he could recall only one or two telephone conversations about the document and did
28 not recall any face-to-face meetings. (See Stamp Opp. Decl. Ex. 8 (Kamarei Dep.) at

1 54:1-5, 56:22-25, 57:1-15.) Kamarei represented SmartTouch LLC and Maier represented
2 Omnilock during those negotiations. (See id. at 52:7-17, 54:6-16.) Kamarei did not
3 prepare the initial draft. (See id. at 58:10-59:9.) In general, Kamarei had very little
4 recollection of any work that he did on the document, but he did testify that SmartTouch's
5 objective was "to obtain an assignment of – conditional assignment of the inventions that
6 Omnilock owned." (See id. at 78:20-79:12.) Kamarei's understanding of the document was
7 that "SmartTouch owned the inventions, but it had to perform to keep it." (See id. at 95:23-
8 96:16.) Kamarei also testified that he referred to the document, after it was signed, in
9 conversations with Lapsley, Pare, and perhaps Philip J. Gioia ("Gioia"),⁴ and that they
10 referred to it as the "nuclear bomb or the nuclear weapon," a phrase that was coined by
11 Lapsley. (See id. at 87:13-89:1.) Kamarei testified that it was referred to as the "nuclear
12 weapon" because when SmartTouch later had difficulty raising funds, "everyone thought
13 that basically the company [would] fail and therefore – you know, the discussion of pulling
14 back the patents came up and that is why it was called the nuclear weapon." (See id. at
15 197:5-14.)

16 Maier testified at deposition that he had a "dim recollection" of "seeing the
17 agreement and being involved in the negotiations of the agreement." (See Stamp Opp.
18 Decl. Ex. 7 (Maier Dep.) at 38:13-25.) Maier recalled that he represented Omnilock and
19 that Kamarei represented SmartTouch. (See id. at 39:2-10.) He recalled seeing the
20 document on or around May 8, 1995, the date that appears on the document. (See id. at
21 40:10-13.) Maier recalled that the negotiations over the content of the document took
22 between five and twenty hours over the course of two weeks to three months to complete.
23 (See id. at 45:21-46:2, 61:13-21.) Maier had a "dim memory" that "there was a conditional
24 transfer of technology rights to SmartTouch, and that there were negotiations over the
25 conditions that would apply to allow SmartTouch to retain that technology." (See id. at
26 51:2-15.) He also recalled that "there were issues about certain business milestones that
27

28 ⁴ Gioia was President and CEO of SmartTouch/Indivos and a member of its Board of
Directors from August 1998 to July 2002. (See Gioia Decl. ¶ 2.)

1 SmartTouch would be obligated to achieve in order to retain the technology, and there-
2 would be conditions under which the technology would revert to the original grantor if the
3 milestones were not achieved." (See id. at 52:5-11.) Maier also recalled that the intent of
4 the agreement was "that the ability to use the technology was being transferred to
5 SmartTouch, although the ability to use – that ability was contingent on SmartTouch's
6 achieving certain business milestones." (See id. at 64:18-65:1.) At the time of his
7 deposition, Maier did not recall drafting any particular provision of the document. (See id.
8 at 84:18-21.)

9 Hoffman testified at his deposition that the negotiations concerning the May 8, 1995
10 IP-Patent License took place over a period of about two months, prior to the formation of
11 SmartTouch LLC. (See Slater Decl. Ex. 1 (Hoffman Dep.) at 40:1-15.) At one point in his
12 deposition, Hoffman testified that he did not recall whether he ever showed the document
13 to anyone after he signed it, including Mendelsohn or Harold Silen ("Silen").⁵ (See id. at
14 244:23-245:45.) At a later point in his deposition, he testified that he could not recall
15 showing the document to anyone at SmartTouch LLC, but did recall showing it to Gioia
16 before he worked for SmartTouch, Inc.. (See Stamp Opp. Decl. Ex. 11 (Hoffman Dep.) at
17 443:11-444:13.) He could not recall whether he ever disclosed the document to any
18 potential investor. (See Slater Decl. Ex. 1 (Hoffman Dep.) at 276:20-277:14.) Hoffman
19 does recall a conversation with Lapsley, in or about 1998, in which Lapsley expressed the
20 opinion that if Gioia failed, it was a good thing that Excel had "the nuclear weapon" and
21 could keep the patents. (See Stamp Opp. Decl. Ex. 10 (Hoffman Dep.) at 434:11-436:2.)
22 Hoffman also recalled discussing the sublicense with Lapsley in the summer of 1999, when
23 Lapsley told Hoffman on several occasions that he was frustrated and concerned about
24 Gioia and was glad that they "had the nuclear weapon." (See id. at 436:12-25.) Hoffman
25 also recalled discussing the sublicense with Gioia in the summer of 1999 while they were
26 discussing an upcoming presentation to the Board of Directors. (See id. at 449:11-453:3.)

27
28 ⁵ Silen was Secretary of the Board of Directors of Omnilock/SportsMitt/Excel from
the mid-1980s until March 2003. (See Silen Decl. ¶¶ 2-3, 12.)

1 Hoffman states that he "reminded" Gioia that the patents were only conditionally assigned.
2 (See id. at 452:7-20.) Hoffman also testified that at some point he had told Pare about
3 SmartTouch's "conditional interest in the patents[.]" although he could not recall whether he
4 had ever shown Pare a copy of the May 8, 1995 IP-Patent License. (See id. at
5 456:11-457:1.)

6 **a. Excel's view of the May 8, 1995 IP-Patent License**

7 Excel contends that Indivos breached the IP-Patent License in November 2002, and
8 that all rights in the Invention automatically reverted to Excel. (Hoffman 9/12/03 Decl.
9 ¶ 35.) On November 8, 2002, Hoffman sent a letter to Indivos terminating the IP-Patent
10 License as a result of material breaches assertedly committed by Indivos. (See id. Ex. H.)
11 Hoffman informed Indivos that it was in breach of section 6.5 due to Indivos' "bankruptcy,
12 financial failure and/or insolvency," that Indivos had breached section 3.2.2 "due to Indivos'
13 failure to meet and exceed the Performance Guarantees, including failure to make the
14 required royalty payment of \$20 Million due to Excel," and that Indivos had breached
15 section 4.1 "due to Indivos' failure to dedicate Best Efforts to achieving the Performance
16 Guarantees." (See id.)

17 Hoffman attests that "[b]y November 2002, Excel was informed by Indivos
18 management that Indivos was \$2 million in debt with virtually no cash left and that they
19 were planning to file bankruptcy." (Hoffman 9/12/03 Decl. ¶ 15.) Hoffman also attests that
20 Indivos never paid anything to Excel under the IP-Patent License, and thus breached the
21 performance guarantees set forth in § 3.2.2 of the IP-Patent License. (See id. ¶ 16.) As a
22 result of Indivos' breach of the IP-Patent Agreement, Excel argues, ownership of the
23 patents reverted automatically to Excel.

24 **b. Defendants' view of the May 8, 1995 IP-Patent**
25 **License**

26 Defendants contend that the May 8, 1995 IP-Patent License is a forgery created
27 after the fact. Silen, Secretary of the Board of Directors of Omnilock/SportsMitt/Excel from
28 the mid-1980s until March 2003, attests that he had never seen or been made aware of

1 any 1995 license or sublicense between Omnilock and SmartTouch LLC during his years of
2 service on the Board of Directors. (See Silen Decl. ¶ 10.) He states: "If a valid sublicense
3 to such important technology existed, I would have been made aware of it as an Excel
4 Director. No such sublicense existed." (See id.)

5 Gioia, President and CEO of SmartTouch, Inc./Indivos and a member of its Board of
6 Directors from August 1998 to July 2002, attests that he has "never seen or heard of any
7 alleged Excel-SmartTouch license or sublicense and ha[s] no reason to believe that it is a
8 genuine document that binds Indivos." (See Gioia Decl. ¶ 7.) Gioia attests that if any such
9 document exists, it would be fraudulent. (See id.)⁶

10 Robert Goldberg ("Goldberg"), former CEO of SmartTouch LLC/SmartTouch, Inc.
11 from July 1996 to November 1998 and former CEO of Indivos from November 2002 until its
12 July 2003 merger with Solidus, attests that he had never heard of any Excel interest in the
13 patents until he received a letter from Hoffman on November 8, 2002 purporting to
14 terminate a license between Omnilock and SmartTouch LLC that Goldberg had never
15 heard of before. (See Goldberg Decl. ¶¶ 3, 5, 7 and Ex. A.)

16 Bruce Whitley ("Whitley"), a lawyer who prepared the amendments to the June 16,
17 1995 SmartTouch LLC Operating Agreement and worked with SmartTouch from 1995 to
18 1999, testified at deposition that he had never heard of the May 8, 1995 IP-Patent License.
19 (See Slater Supp. Decl. Ex. G (Whitley Dep.) at 21:6-22:12, 23:7-12, 23:21-24:2.) Whitley
20 further testified that no one ever told him that SmartTouch had a \$20 million obligation to
21 Omnilock, and he expressed shock at his deposition when he learned that Excel had
22 claimed such an obligation was created by the May 8, 1995 IP-Patent License. (See id. at
23 42:24-43:16.)

24
25
26 ⁶ Gioia attests that Hoffman has been known to forge documents. (See id.)
27 According to Gioia, Hoffman, in 1999, altered a genuine SmartTouch Private Placement
28 Memorandum to list himself as CEO at a time when Gioia was president and CEO of the
company, "made other significant false claims within the modified documents," and used
the altered document to solicit an investment from a third party. (See id.)

1 8. **May 17, 1995 Patent Application and Unconditional**
2 **Assignment of Patent Application to SmartTouch LLC**

3 On May 17, 1995, United States Patent Application No. 442,895 was filed (see
4 Slater Decl. Ex. 9), which later issued on March 18, 1997 as the '012 patent. (See Stamp
5 Decl. Ex. 12.) Hoffman, Pare, and Lee are identified in that application and in the final
6 patent as the inventors. (See Slater Decl. Ex. 9; Stamp Decl. Ex. 12.) In connection with
7 the patent application, Hoffman filed, on behalf of SmartTouch LLC, a verified statement
8 claiming small entity status, in which Hoffman attested that "rights under contract or law
9 have been conveyed to and remain with [SmartTouch LLC] with regard to the invention."
10 (See Slater Decl. Ex. 9.)

11 The same day, Omnilock, Pare and Lee entered into an agreement that Pare and
12 Lee would "assign all of [their] rights under the patent application for the SmartTouch
13 technology to SmartTouch LLC in exchange for a member's interest in SmartTouch, LLC
14 according to the terms of [their] March 30, 1995 letter agreement with Omnilock[.]" (See
15 Lee Decl. ¶ 7 and Ex. 3; Pare Decl. ¶ 7 and Ex. 3.) The agreement was signed by Maier
16 on behalf of Omnilock, and by Lee and Pare. (See id.) Lee and Pare both attest that this
17 agreement referred to the patent application that issued as the '012 patent. (See Lee Decl.
18 ¶¶ 7-8; Pare Decl. ¶¶ 7-8.)

19 Also that same date, May 17, 1995, Hoffman, Pare and Lee each executed an
20 unconditional assignment of their rights in the application for the '012 patent to SmartTouch
21 LLC. (See Lee Decl. ¶ 8; Pare Decl. ¶ 8; Slater Decl. Ex. 57.) In the assignment, Hoffman,
22 Pare and Lee, for consideration of \$1.00, assigned "all right, title and interest in and to the
23 said invention, said application for United States Letters Patent, and any Letters Patent
24 which may hereafter be granted on the same in the United States and all countries through
25 the world including any divisions, renewals, continuations in whole or in part[.]" (See Slater
26 Decl. Ex. 57.) The assignment was signed by Hoffman, Pare and Lee. (See id.)

27 When this assignment was executed, neither Hoffman nor anyone else affiliated with
28 Excel (then Omnilock) raised an objection that the patents should have been assigned to

1 Excel instead of SmartTouch LLC. (See Lee Decl. ¶ 9; Pare Decl. ¶ 9.) The assignment
2 was filed with the PTO on August 21, 1995. (See Slater Decl. Ex. 57.)

3 **9. SmartTouch LLC Operating Agreements – 6/16/95 and 6/30/95**

4 On June 16, 1995, Hoffman and Omnilock entered into an operating agreement for
5 SmartTouch LLC. (See Slater Decl. Ex. 11.) The operating agreement is signed by "Ned
6 Hoffman, President" for Omnilock and by Hoffman separately on his own behalf. (See *id.*
7 at 24.) Pursuant to the operating agreement, Omnilock owned 99% of SmartTouch LLC
8 and Hoffman owned the remaining 1%. (See *id.* at 5 § 1.26.) Omnilock's contribution to
9 SmartTouch LLC was defined to consist of "patent and other property rights to certain
10 technology relating to fingerprint identification," which were otherwise unspecified in the
11 operating agreement, and Hoffman's contribution remained \$100. (See *id.* at 7 § 3.2 and
12 Ex. A.)

13 Hoffman had no recollection at his deposition as to what the language quoted in the
14 previous sentence meant. (See Slater Decl. Ex. 1 (Hoffman Dep.) at 113:20-114:25.)
15 Maier testified at deposition that he had "only a very dim memory of having worked on it,"
16 could not recall who prepared the first draft of the agreement, and could not recall any
17 specific section that he might have worked on. (See Slater Decl. Ex. 26 (Maier Dep.) at
18 96:6-11.) He had no recollection of any drafting instruction from any party. (See *id.* at
19 97:14-23.)

20 The June 16, 1995 operating agreement was amended June 30, 1995 to grant
21 ownership units to Pare, Lee, Lapsley and Kamarei "[i]n consideration for services being
22 provided by the undersigned to the LLC." (See Stamp Decl. Ex. 13 (SmartTouch LLC
23 operating agreement dated 6/30/95) at 1.) The document is signed by "Ned Hoffman,
24 President, SportsMitt International, Inc." for Omnilock, and by Hoffman, Pare, Lee, Lapsley,
25 and Kamarei on their own behalf. (See *id.* at 4.) The June 30, 1995 operating agreement
26 grants Pare and Lee a total of 20% of the shares of SmartTouch LLC, in accordance with
27 the March 30, 1995 agreement that Pare and Lee would "receive an equity interest in
28 Newco representing twenty percent (20%) of all of the outstanding shares." (See *id.* at 1

1 ¶ 2; Lee Decl. ¶ 5 and Ex. 2; Pare Decl. ¶ 5 and Ex. 2.)

2 Silen attests that it was his understanding that "[i]n 1995, Excel had contributed any
3 and all of its patent rights in the biometric system to Indivos, free and clear, in exchange for
4 stock in Indivos" and Excel "retained no interest in the biometric patents, all of which were
5 assigned to Indivos, not Excel." (See Silen Decl. ¶ 7.)

6 Whitley, a lawyer who, as noted, prepared the amendments to the June 16, 1995
7 SmartTouch LLC Operating Agreement and worked for SmartTouch from 1995 to 1999,
8 testified at deposition that it was his understanding that in the Operating Agreement,
9 Omnilock intended to transfer to SmartTouch all interest Omnilock had in the patented
10 technology. (See Slater Supp. Decl. Ex. G (Whitley Dep.) at 15:15-24, 16:21-17:12,
11 18:10-12.) According to Whitley, Hoffman was the person at SmartTouch who instructed
12 Whitley to draft the amendments to the Operating Agreement, and he never told Whitley
13 that any entity other than SmartTouch owned the biometric patents. (See id. ¶ 19:2-14.) In
14 fact, Whitley's understanding was that SmartTouch owned 100% of the biometric
15 technology, without any lien or claim or interest by any other entity, including
16 Omnilock/Excel, (see id. at 19:24-20:13), and neither Hoffman nor Kamarei ever told him
17 anything to the contrary. (See id. at 25:4-11.)

18 **10. Bill of Sale and Assignment – 1/1/96**

19 On January 1, 1996, Hoffman, Pare, Lee, Lapsley, Kamarei, Mendelsohn, and Silen
20 entered into a Bill of Sale and Assignment ("Bill of Sale"). (See Slater Decl. Ex. 10.) The
21 document describes the signatories as the "Sellers" and describes SmartTouch LLC as the
22 "Buyer." (See id.) The Bill of Sale states that the Sellers "created certain intellectual
23 property and intellectual property rights in various systems involving the biometric
24 identification of individuals and the use of biometric data in connection with financial or
25 information transaction verifications ('Property')." (See id.) The Bill of Sale further states:
26 "Because the Property was created by the Sellers without either an employment or
27 consulting agreement between the Buyers and Sellers, and without any consideration
28 otherwise being paid, the parties acknowledge the ownership interest of the Sellers in the

1 Property." (Id.) In the Bill of Sale, SmartTouch LLC indicates its desire "to have clear title
2 to the Property," and the Sellers state they have "good and marketable title to all of the
3 property free and clear of any liens, claims and encumbrances of any other person."
4 (See id.)

5 The Bill of Sale indicates that SmartTouch LLC issued to the Sellers that same date
6 "warrants to purchase units of SmartTouch LLC," such warrants being "in full consideration
7 for the Property" with "no obligation on the part of any Seller to perform future services for"
8 SmartTouch LLC. (See id.) Pursuant to the Bill of Sale, the Sellers "transfer[red] and
9 assign[ed] all of their rights and title to any and all intellectual property and intellectual
10 property rights in various systems involving the biometric identification of individuals and
11 the use of biometric data in connection with financial or information transaction verifications
12 that Sellers have an interest as of the date of [the] Bill of Sale." (See id.) The Bill of Sale
13 does not mention Excel.

14 Whitley drafted the Bill of Sale. (See Slater Supp. Decl. Ex. G (Whitley Dep.) at
15 34:20-35:9.) According to Whitley, the purpose of the document was to ensure that there
16 was adequate consideration for the issuance of warrants, and to make sure that any
17 intellectual property that had been developed by the individual inventors, Lapsley in
18 particular, in connection with the SmartTouch technology had been assigned to
19 SmartTouch LLC. (See id. at 35:19-36:22.)

20
21 **11. SmartTouch LLC Transfers Property to SmartTouch, Inc. –
8/97**

22 In a Contribution Agreement dated August 1997, SmartTouch LLC contributed
23 certain assets to SmartTouch, Inc. in exchange for 185,677 shares of SmartTouch, Inc.
24 Series A preferred stock. (See Slater Decl. Ex. 12 at 1.) The Contribution Agreement
25 identified the assets to include "Assignee Rights" to the '012 and '277 patents, "All
26 Assignee Rights to U.S. Patent Applications" and "Any and All other Assets of SmartTouch,
27 LLC." (See id. Ex. A.) In the Contribution Agreement, SmartTouch LLC warranted that:

28 SmartTouch owns the Assets free and clear of all liens, pledges,

1 encumbrances, claims, equities, conditions, and rights of others of any kind or
2 nature whatsoever. SmartTouch has full power and authority to so transfer
the Assets, without the consent or approval of any other person or entity.

3
4 (See id. at 1.) The Contribution Agreement is signed by "Ned Hoffman, President" on
behalf of SmartTouch, Inc. and by "Ned Hoffman, Manager" on behalf of SmartTouch LLC.

5 (See id. at 4.)

6 According to Larry Ginsburg ("Ginsburg"), an investor in SmartTouch LLC and later a
7 member of the Board of Directors, Hoffman never said that he should have assigned the
8 patents to Excel rather than SmartTouch LLC, and Hoffman never said that the phrase
9 "Assignee Rights" used in the Contribution Agreement meant that SmartTouch LLC was
10 merely the licensee of Excel, as opposed to the assignee of the patents from the inventors.

11 (See Ginsburg Decl. ¶ 9.) According to Ginsburg, Hoffman "did not say such things
12 because they were not true, and Mr. Hoffman, more than anyone, constantly touted
13 Indivos' sole and exclusive ownership of the patents to any potential investor or customer
14 who would listen." (See id.)

15 Mendelsohn testified at deposition that he understood that by this agreement,
16 SmartTouch LLC was contributing to SmartTouch, Inc "all of the assets that the LLC had at
17 the time." (See Stamp Decl. Ex. 3 (Mendelsohn Dep.) at 53:14-20.) With respect to the
18 "Assignee Rights" in the biometric patents, Mendelsohn testified that he was not "focused
19 on defining what those rights might be or even checking to see if they were the proper
20 numbers and all of the rest of it." (See id. at 53:21-54:5.) Mendelsohn also testified,
21 however, that he understood that SmartTouch LLC was contributing "all of the rights and
22 patents that they had." (See id. at 54:6-12.) When asked whether he meant "clear title,"
23 Mendelsohn responded, "Using my terminology, yes." (See id. at 54:13-15.)

24 Excel expressly consented in writing, in a document dated April 4, 1997 and entitled
25 "Consent to the Sale of Assets and Dissolution of SmartTouch LLC" ("Consent"), to
26 SmartTouch LLC's assignment of assets to SmartTouch, Inc. (See Slater Decl. Ex. 60.)
27 The Consent provides: "The Manager is hereby authorized to contribute all of the
28

1 Company's assets to SmartTouch, Inc., a Delaware corporation[.]” (See id. at 1.) The
2 Consent is signed by “Ned Hoffman, President” on behalf of Excel, and by Hoffman on his
3 own behalf. (See id. at 2.)

4
5 **12. Inventor assignments to SmartTouch LLC and SmartTouch, Inc.**

6 Beginning May 17, 1995, shortly after the date of the IP-Patent License, the
7 inventors executed a series of assignments to SmartTouch LLC and SmartTouch, Inc. of
8 the various patent applications for fourteen of the fifteen subject patents. (See Def. Ev. 1C-
9 14C, filed August 29, 2003; see also Slater Decl. Ex. 61.) All of the assignments to
10 SmartTouch LLC were later assigned by SmartTouch LLC to SmartTouch, Inc. (See id.)
11 Each of the assignments was recorded with the PTO. (See id.)

12
13 **13. Employee Proprietary Information and Inventions Agreements – 7/99**

14 In July 1999, Hoffman, Pare, Lee and Lapsley entered into agreements with
15 SmartTouch, Inc., in which they each agreed to:

16 assign to the Company, without further consideration, my entire right, title and
17 interest (throughout the United States and in all foreign countries), free and
18 clear of all liens and encumbrances, in and to each Invention Idea, which
shall be the sole property of the Company, whether or not patentable.

19 (See Slater Decl. Ex. 6 at INV 08811 ¶ 8 and Exs. 62-64 ¶ 8.) “Invention Idea” was
20 defined as:

21 any and all ideas, . . . inventions, . . . patents, . . . and improvements to the
22 foregoing that are conceived, developed or created by me alone or with
23 others during my employment with the Company . . . that (a) fall within the
24 existing or contemplated business of the Company . . . ; (b) relate to actual or
demonstrably anticipated research or development of the Company; (c) result
from work done by me for or at the request of the Company

25 (See id. ¶ 6.) Each of the inventors agreed that “the Company’s business shall be defined
26 as only ‘Tokenless Biometric Electronic Transmissions and/or Transmissions’ and that
27 “there are no ideas, . . . inventions, . . . patents, . . . or improvements to the foregoing which
28 are in the field of the Company’s business that I desire to exclude from this Agreement.”

1 (See id. ¶ 9.)

2 **14. Other Statements About Patent Ownership Prior to Current**
3 **Dispute**

4 **a. SmartTouch 1995 and 1997 Business Plans, and 1997**
5 **Private Placement Memorandum**

6 Hoffman participated in the drafting of business plans for SmartTouch in 1995 and
7 1997, which were used to solicit investments from potential investors. (See Slater Decl. Ex.
8 16 (Pare Dep.) at 52:12-53:17; Slater Decl. Ex. 15 (Lee Dep.) at 78:16-79:21; Slater Decl.
9 Ex. 39 (Lapsley Dep.) at 57:13-58:22; Goldberg Decl. ¶ 6.) The 1995 business plan states
10 that "SmartTouch LLC . . . has a new proprietary technology . . . that uses a voluntary,
11 inkless fingerprint and a personal identification number in place of plastic cards to identify
12 individual consumers and authorize their financial transactions at automated teller
13 machines ('ATMs') and at the point of sale ('POS') in retail stores . . . [which] is the subject
14 of a detailed United States Pending Patent[.]" (See Slater Decl. Ex. 39 at 3.) The business
15 plan repeatedly refers to the "SmartTouch technology" and the "SmartTouch system."
16 (See, e.g., id. at 5, 6.) No reference appears in the document to any ownership rights in
17 the technology by Excel or anyone else.

18 The 1997 business plan was drafted by Hoffman and Goldberg, Indivos' former
19 CEO, and states that "SmartTouch has developed and patented a number of technologies
20 which will facilitate the global use of biometric identification mechanisms in a broad range
21 of applications." (See Slater Decl. Ex. 45 at 4; Goldberg Decl. ¶ 6.) The business plan
22 repeatedly refers to the patented technology as SmartTouch's technology. (See, e.g.,
23 Slater Decl. Ex. 45 at 5 (referring to "[t]he SmartTouch product," "the SmartTouch system,"
24 "SmartTouch's patented RISE™ server technology," "SmartTouch's patented systems" and
25 stating "Smart Touch will exploit its technologies").) No reference appears in the document
26 to any ownership rights in the technology by Excel or anyone else. Goldberg attests that
27 Hoffman never suggested to him that the document should disclose that Excel had an
28 interest in the patents. (See Goldberg Decl. ¶ 6.)

Similar statements appear in SmartTouch's 1997 Private Placement Memorandum.

1 (See Slater Decl. Ex. 46.) For example, that document states:

2 SmartTouch, Inc. . . . has developed and patented technologies which will
3 facilitate use of biometric identification systems in a broad range of
4 applications. SmartTouch has developed and patented a cardless or
5 'tokenless' biometric processing system which facilitates the rapid search of
large finger-image databases without the use of any cards such as credit
cards, smart cards, or identification cards.

6 (See id. at 4.) Nothing in the Private Placement Memorandum states that SmartTouch had
7 only a license in the patented technology from Excel, or that anyone other than
8 SmartTouch had any rights in the technology.

9 Goldberg attests that SmartTouch/Indivos regularly relied on documents such as
10 business plans and private placement memoranda to entice new employees and investors,
11 and that the documents always stressed that the company owned the patents. (See
12 Goldberg Decl. ¶ 5.) According to Goldberg, no reference was ever made to Excel, and no
13 reference was ever made to SmartTouch/Indivos' being a mere licensee of the technology.
14 (See id.)

15 **b. 1995 Tax Return**

16 SmartTouch LLC's 1995 tax return includes deductions for depreciation of the
17 patents. (See Slater Decl. Ex. 38.) The return designates Hoffman as the "general partner
18 designated as the tax matters partner for the 1995 tax year." (See id.)

19 **c. Statements at Excel Board Meetings – 1995-2002**

20 Silen attests that from 1995 to 2002, Hoffman "never raised any issue at any Excel
21 Board meeting about Excel having any ownership interest in the biometric patents." (See
22 Silen Decl. ¶ 8.) According to Silen: "Such issues were never raised because we all
23 understood – Mr. Hoffman, Mr. Mendelsohn and me – that Indivos owned the patents, free
24 and clear, and Excel owned stock in Indivos." (See id.)

25 Similarly, Ginsburg attests that Hoffman would regularly report to Indivos' Board of
26 Directors on the status of its intellectual property, but never stated that Indivos was less
27 than the full, exclusive owner of the biometric patents; "[t]o the contrary, he regularly
28 reported on the status of Indivos' patents, i.e., what patents Indivos owned" and never

1 mentioned Excel in relation to the patents at any Indivos Board meeting. (See Ginsburg
2 Decl. ¶ 11.)

3 **d. 1996 Solicitation of Goldberg**

4 As noted, Goldberg is a former CEO of Indivos. (See Goldberg Decl. ¶ 1.)
5 According to Goldberg, Hoffman, in 1996, made a presentation to Goldberg to try to
6 convince him to invest in SmartTouch LLC. (See id. ¶ 2.) Goldberg further states that he
7 asked Hoffman "whether the company owned the patents, free and clear, and he affirmed
8 that it did on numerous occasions," after which Goldberg invested \$50,000 and joined the
9 company as CEO in July 1996. (See id. ¶¶ 2-3.)

10 **e. 1996 Solicitation of Ginsburg**

11 Ginsburg, as noted, was a member of SmartTouch, Inc./Indivos' Board of Directors
12 from March 1999 until Indivos merged with Solidus in July 2003; he has also served as
13 financial advisor for Mendelsohn and Hoffman. (See Ginsburg Decl. ¶¶ 1-2.) According to
14 Ginsburg, Hoffman, in 1996, solicited an additional investment in SmartTouch LLC from
15 Mendelsohn and encouraged Ginsburg to invest, as well. (See id. ¶ 5.) Ginsburg states
16 that Mendelsohn asked Ginsburg to review the investment opportunity, and that Ginsburg
17 reviewed the issued patents and had others evaluate them to determine that clear title was
18 owned by SmartTouch LLC. (See id. ¶ 5.)

19 According to Ginsburg, Hoffman assured Ginsburg that SmartTouch LLC's
20 prospects were bright because of its patents and patent applications, and that Hoffman's
21 "repeated and clear assurances that Indivos, and Indivos alone, would own the patents"
22 were the main reason Ginsburg decided to invest in the company (see id. ¶ 6); Hoffman
23 never suggested that Excel had licensed or sublicensed the patents to Indivos. (See id.
24 ¶ 7.)

25 **f. Attempted Sale of Excel 1996-97**

26 As noted, Gioia was President and CEO of SmartTouch/Indivos and a member of its
27 Board of Directors from August 1998 to July 2002. (See Gioia Decl. ¶ 2.) Prior to joining
28 SmartTouch, Inc., Gioia was employed by Bay Street Group ("BSG"), which provided

1 investment banking and consulting services. (See id. ¶ 3.) Gioia states that Hoffman
2 contacted him to help Hoffman sell Excel in its entirety to a third party. (See id.) At the
3 time, Hoffman was Excel's President and only employee and, according to Gioia, Excel's
4 primary assets were a number of issued patents relating to sports and self-improvement
5 products such as swim gloves, bicycle locks and various other items. (See id.) In
6 particular, Hoffman, in connection with the proposed transaction, repeatedly listed Excel's
7 patent assets on charts, but never listed any biometric patent as an Excel asset. (See id.)⁷

8 Consistent with Gioia's recollection, Silen attests that when the Excel Board looked
9 "into the possibility of selling Excel in the 1996-97 time frame, Mr. Hoffman did not include
10 the biometric patents among Excel's assets for sale because they were owned by Indivos,
11 not Excel." (See Silen Decl. ¶ 8.)

12 Hoffman testified at his deposition, however, that he showed Gioia the May 8, 1995
13 IP-Patent License while Gioia was reviewing Excel's contracts and patents during the time
14 Gioia was attempting to help Hoffman sell Excel. (See Stamp. Opp. Decl. Ex. 11 (Hoffman
15 Dep.) at 443:18-446:7.)

16 **g. Hoffman's Solicitation of Gioia**

17 As noted, Gioia attests that prior to Gioia's joining SmartTouch, Inc. in August 1998,
18 Hoffman solicited his assistance in raising money for SmartTouch. (See Gioia Decl. ¶ 5.)
19 Gioia further attests that during the course of Gioia's providing assistance to SmartTouch,
20 Hoffman invited Gioia to join SmartTouch, Inc. as president and CEO. (See id.) According
21 to Gioia, Hoffman told Gioia that Excel had contributed the biometric patents to
22 SmartTouch in 1995 and that SmartTouch had a bright future because of its ownership of
23 those patents. (See id.)

24 Gioia states that before joining the company, Gioia reviewed SmartTouch's
25 corporate documents, including the 1995 LLC Operating Agreement and the 1997
26 Contribution Agreement, which he interpreted as showing that SmartTouch owned the

27
28 ⁷ Gioia states he was unable to find a buyer for Excel because, in his opinion,
Hoffman had overestimated the value of Excel's patents. (See id. ¶ 4.)

1 biometric patents. (See id. ¶ 6.) According to Gioia, Hoffman told Gioia that Gioia's
2 understanding of the documents was correct. (See id.) Gioia attests that he would never
3 have accepted stock option compensation and a reduced salary from SmartTouch, Inc. if
4 Hoffman had informed him that Excel owned the patents. (See id.) As noted above,
5 however, Hoffman testified at his deposition that he showed Gioia the May 8, 1995 IP-
6 Patent License while Gioia was reviewing Excel's contracts and patents during Gioia's work
7 to help sell Excel. (See Stamp. Opp. Decl. Ex. 11 (Hoffman Dep.) at 443:18-446:7.)

8 **h. Diamond Group Investment – 1998**

9 In 1998, Robert Fortuno ("Fortuno") performed due diligence on behalf of the
10 Diamond Group, which was then considering the possibility of making a large investment in
11 SmartTouch, Inc. (See Fortuno Decl. ¶ 2-3.) Fortuno attests that he was interested in
12 making a personal investment as well, and, consequently, had an added incentive to make
13 sure that SmartTouch actually owned the biometric patents that were the core of its
14 business. (See id. ¶ 3.) According to Fortuno, when Hoffman told Fortuno that
15 SmartTouch owned the "prime patent real estate," Fortuno asked for copies of the patents
16 (see id. ¶¶ 4-5); Fortuno found that all of the patents showed SmartTouch as the owner,
17 and none of them mentioned Excel in any way. (See id. ¶ 5.) Fortuno states that because
18 the Diamond Group made a substantial investment, SmartTouch agreed that the Diamond
19 Group would be granted a seat on the Board of Directors, which Fortuno occupied from
20 June 1998 to October 2002. (See id. ¶ 6.)

21 Fortuno attests that before Hoffman's termination in 1999, Hoffman was
22 SmartTouch's Vice President of Intellectual Property and regularly reported to the Board on
23 issues involving the company's patent portfolio. (See id. ¶ 7.) Fortuno further attests that
24 Hoffman never suggested that Excel might have an interest in the patents, never referred
25 to any Excel-SmartTouch patent license or sublicense, and never suggested that Excel
26 might have an interest in any of the biometric patents as a consequence of any
27 employment agreements signed by Excel and Hoffman. (See id.) According to Fortuno, he
28 had extensive dealings with Hoffman over many years, and Hoffman never suggested at

1 any time that Excel had any interest in the patents; had he done so, the Diamond Group
2 would never have invested in SmartTouch. (See id. ¶ 13.)

3 Hoffman recalls discussing the patents and technologies with the Diamond Group
4 investors, but does not recall having any discussion about who owned the patents. (See
5 Slater Decl. Ex. 1 (Hoffman Dep.) at 153:16-154:14.)

6 **i. 1998 Patent Insurance Policy**

7 In 1998, Hoffman obtained a Patent Infringement Abatement insurance policy for
8 SmartTouch, Inc. (See Slater Decl. Ex. 72.) Hoffman signed the application for that policy
9 on behalf of SmartTouch, Inc. (See id. Ex. 72 Application at 3.) In signing the application,
10 Hoffman warranted that SmartTouch, Inc. was not a licensee of any of the patents (see id.,
11 § 7c), and that SmartTouch, Inc. was the owner of all of the patents. (See id. at 3.)

12 **j. 1999 Patent Audit**

13 Alexander C. Johnson ("Johnson"), an attorney, declares that, in 1999, SmartTouch,
14 Inc. asked Petkevich and Partners, LLC ("Petkevich") to underwrite a stock offering, and
15 that Petkevich retained Johnson to conduct an audit of SmartTouch's patent portfolio to
16 make sure that SmartTouch owned the biometric patents that formed the core of its
17 business. (See Johnson Decl. ¶¶ 3-4.) According to Johnson, his review of the patent
18 records indicated that all of the patents had been unconditionally assigned to SmartTouch,
19 (see id. ¶ 5); further, Lapsley and Kamarei assured Johnson that Indivos owned the
20 patents. (See id. ¶¶ 6-7.) Johnson further attests that he specifically asked Kamarei
21 whether SmartTouch had licensed any of its patents from a third party, and Kamarei
22 expressly denied that SmartTouch had entered into any such licenses, (see id. ¶ 7);
23 Kamarei never suggested in any way that Excel owned the patents, had licensed them to
24 SmartTouch, or had any other interest in the patents. (See id. ¶ 8.)

25 **15. Hoffman-SmartTouch Settlement Agreement – 6/16/00**

26 In November 1999, SmartTouch, Inc.'s Board of Directors decided to terminate
27 Hoffman as a result of various alleged acts of misconduct by Hoffman. (See Fortuno Decl.
28 ¶¶ 8-9.) On June 16, 2000, Hoffman entered into a settlement agreement with

1 SmartTouch, Inc. ("Settlement Agreement") to resolve the disputes between them. (See
2 Slater Decl. Ex. 6.) The Settlement Agreement states that Hoffman was employed with
3 SmartTouch, Inc. from November 12, 1996 to November 29, 1999, and that he resigned his
4 membership on the Board of Directors of SmartTouch, Inc. in December 1999. (See id. at
5 1.) The settlement agreement was intended to resolve all claims SmartTouch and Hoffman
6 may have had against each other as a result of Hoffman's termination on November 29,
7 1999. (See id. at 1.)

8 As part of the settlement agreement, Hoffman and SmartTouch, Inc. also executed a
9 "Confirmation and Assignment." (See id. at INV 08866.) In that document, Hoffman
10 agreed that "[i]n connection with the formation and capitalization of the Company, [he]
11 assigned all right, title and interest in and to certain intellectual property to the Company[.]"
12 (See id.) Hoffman also declared and re-affirmed, "for the avoidance of doubt, that the
13 intellectual property set forth in Attachment I [to the "Confirmation and Assignment"] . . .
14 has been permanently and irrevocably assigned by Hoffman to the Company." (See id.)
15 Additionally, Hoffman agreed to "assign Hoffman's right, title and interest to all Invention
16 Ideas [as defined in the July 1999 Employee Proprietary Information and Inventions
17 Agreement] to the Company." (See id. at 1.) The agreement states that "all of the
18 Intellectual Property [described in Attachment I] has been legally, permanently and
19 irrevocably assigned by Hoffman to the Company, and that the Company is the sole owner
20 thereof." (Id.) The Confirmation and Assignment also provides: "The parties hereto agree
21 that the assignments contemplated herein are permanent and irrevocable, independent of
22 any limitations, conditions or obligations under any other agreement, and fully enforceable
23 irrespective of any breach or termination of any other agreement or agreements to which
24 either or both of them is a party or any other obligation imposed by law." (Id. at 2 ¶ 4.)

25 Appendix I lists a large number of patents and patent applications. (See id.,
26 Appendix I.) It expressly lists eight of the fifteen patents at issue in this lawsuit: the '277,
27 '012, '812, '723, '789, '199, '719, and '039 patents. (See id.) It also lists the patent
28 applications from which six of the remaining seven patents were issued: the '682, '148,

1 '348, '142, '879, and '198 patents. (See id.) The one remaining patent, the '042 patent, is
2 a continuation of U.S. application 09/239,595, which became the '148 patent. (See Def.
3 Ev. Ex. 15(A), filed August 29, 2003, at 4.) That patent application is listed in Appendix I.
4 (See Slater Decl. Ex. 6 Appendix I.) Thus, Hoffman purported to assign all of the patents at
5 issue to SmartTouch, Inc. in the "Confirmation and Assignment."

6 Hoffman attests that there were explicit requests by Indivos to have Excel sign away
7 its rights in the patents as part of the settlement agreement, but that Excel refused to do so.
8 (See Hoffman 9/12/03 Decl. ¶ 11.) According to Hoffman, Indivos' CEO, Gioia, in
9 completing the negotiations for the settlement agreement, "made it clear that he was
10 content to act on this limited agreement with Hoffman as a private individual, and knowingly
11 gave up any permanent assignments of the invention or the patents from Excel." (See id. ¶
12 13.)

13 Fortuno, who, as noted, was a member of the Board of Directors of
14 SmartTouch/Indivos from June 1998 to October 2002, attests that he conducted extensive
15 negotiations with Hoffman over the settlement terms. (See Fortuno Decl. ¶ 10.) Fortuno
16 attests that an issue of particular concern was Hoffman's contention that he had a personal
17 interest in the patents. (See id. ¶ 11.) Fortuno further attests that Hoffman never indicated
18 that Excel had any claim to the patents, and that Fortuno was not concerned about any
19 such claim because he believed Excel had contributed the patents to SmartTouch under
20 the terms of the 1995 SmartTouch LLC Operating Agreement and the 1997 Contribution
21 Agreement. (See id.) According to Fortuno, Hoffman signed the Confirmation and
22 Assignment without protest, and never suggested Excel had any interest in the patents.
23 (See id. ¶ 12.)

24 At his deposition, Hoffman testified to the contrary. In particular, Hoffman testified
25 that he told Fortuno about "Excel's rights" and told him that he "could sign nothing that
26 would affect those rights." (See Stamp Opp. Decl. Ex. 11 (Hoffman Dep.) at 484:1-16.)
27 Hoffman testified that he believed he told Fortuno that Excel had rights in the biometric
28 patents that SmartTouch was using. (See id. at 485:8-23.) According to Hoffman, Fortuno

1 did not ask to see "the sublicense agreement." (See id. at 485:24-486:1.)

2 **16. Hoffman's attendance at board meetings after his termination**

3 Gioia attests that after Hoffman was terminated as an employee of SmartTouch, and
4 after Hoffman resigned as a member of the company's Board of Directors, Hoffman
5 continued to regularly attend Board meetings as an observer. (See Gioia Decl. ¶ 8.)
6 According to Gioia, Hoffman participated actively and vocally in the meetings, but never
7 suggested at any time that Excel had any rights in the biometric patents. (See id.)

8 **17. Hoffman's statements to Johnson – 2000-2002**

9 Kamarei resigned as Indivos' counsel in 2000. (See Johnson Decl. ¶ 11.) Rather
10 than hire new in-house counsel, Indivos retained Johnson's law firm to handle its patent
11 work as outside counsel. (See id.) Johnson states that he and his associate, Ariel Rogson
12 ("Rogson"), worked with Hoffman on a regular basis from June 2000 to late 2002 in
13 maintaining Indivos' patent portfolio, (see id. ¶ 12), and that during that time, Hoffman
14 never suggested to Johnson or Rogson that the patents should be assigned to Excel rather
15 than to Indivos. (See id. ¶ 13.) According to Johnson, Hoffman never mentioned Excel
16 "and never so much as hinted that anyone other than Indivos had any interest in the
17 patents." (See id. ¶ 13.)

18 **18. Hoffman's statements relating to the Indivos/Solidus merger**

19 By late 2002, Indivos had encountered serious financial difficulties and began
20 looking for a merger partner. (See Slater Decl. Ex. 85 (Goldberg Decl.) ¶ 2.) Hoffman told
21 Ginsburg in an April 2002 email that their highest priority should be to keep Indivos alive
22 and to protect its "strong IP portfolio as an intact, unencumbered asset of the company."
23 (See Ginsburg Decl. ¶ 14 and Ex. A.) In that same email, Hoffman also told Ginsburg that
24 Indivos needed to "closely guard and nourish [its] intellectual property monopoly in the
25 tokenless biometric field." (See id.)

26 According to Goldberg, defendant Solidus was a leading candidate for a merger.
27 (See Slater Decl. Ex. 85 (Goldberg Decl.) ¶ 2.) Goldberg attests that Hoffman initially
28 strongly supported the Solidus merger and, at a meeting with Solidus, Hoffman touted the

1 quality of Indivos' patent-portfolio to Solidus- (See id. ¶ 3.) Goldberg attests that Hoffman
2 later opposed the merger very aggressively in various court proceedings. (See id. ¶¶ 3-5),
3 but despite Hoffman's objections, the Indivos-Solidus merger closed on July 23, 2003.
4 (See id. ¶ 6.)

5 **a. November 2002 lawsuit**

6 In November 2002, Excel filed a lawsuit in state court ("the November 2002 lawsuit")
7 against Indivos for breach of the IP-Patent License. (See Slater Decl. Ex. 49.) In that
8 lawsuit, Excel sought a declaration that it, rather than Indivos, owned the '277 and '012
9 patents, as well as all subsequent patent applications and patents relating to Hoffman's
10 "Tokenless biometric invention." (See id. ¶¶ 4-9 and prayer for relief.)⁸ Goldberg attests
11 that the first time he ever heard of Excel's purported interest in the patents was when
12 Hoffman sent him a letter on November 8, 2002 purporting to terminate an Excel-Indivos
13 license that Goldberg had never seen. (See Goldberg Decl. ¶ 5.)

14 In its complaint filed in the November 2002 lawsuit, Excel alleged that its
15 predecessor, Omnilock, had "obtained a non-assignable and conditional license" from
16 Hoffman, as a result of Omnilock's employment agreement with Hoffman, "to develop,
17 commercialize and market products based on the Tokenless Biometric Invention." (See id.
18 ¶ 5.) Excel also alleged that Omnilock "obtained a non-assignable and conditional license"
19 in Hoffman's '277 patent. (See id. ¶ 6.) By contrast, in its complaint in the instant lawsuit,
20 Excel alleges that, as a result of Hoffman's employment agreement, Excel "was given the
21 rights to Mr. Hoffman's work product, including all creations and inventions." (See FAC
22 ¶ 10.)

23 On July 7, 2003, Excel dismissed the November 2002 lawsuit, without prejudice.
24 (See Def. Ev., filed August 29, 2003, Ex. 19.) Excel filed the instant lawsuit the same day.

26 ⁸ Silen attests that Hoffman filed this lawsuit without seeking permission from Silen
27 or Mendelsohn, the other members of Excel's Board of Directors. (See Silen Decl. ¶ 9.)
28 According to Silen, he and Mendelsohn asked Hoffman to withdraw the lawsuit because it
was based on a false premise, and when Hoffman refused to do so, Mendelsohn and Silen
both resigned from Excel's Board of Directors. (See id.)

1 Hoffman attests that "Excel opted to elevate its state court action for breach of contract and
2 declaratory relief into the federal court so that Excel may enjoin and recover damages for
3 patent infringement as well." (Hoffman 9/12/2003 Decl. ¶ 21.)

4 **b. Other court proceedings**

5 Indivos contends that Hoffman and his former attorney, Kamarei, made statements
6 in other court proceedings challenging the Indivos-Solidus merger that are inconsistent with
7 the claim in the instant complaint that Excel owns the subject patents. In Kamarei v.
8 Indivos Corp., Case No. CPF-02-502026, filed in San Francisco Superior Court, Hoffman
9 filed a declaration, dated May 15, 2003, in which he states, "Solidus stated that it wants to
10 own all tokenless biometric patents – they do not want to discuss any other arrangement
11 nor offer Indivos any security or enforceable guarantee." (See Slater Decl. Ex. 86 ¶ 2(f)
12 (emphasis added).) Kamarei filed a separate declaration in that action, in which he states,
13 "The Proposed Merger is essentially a backdoor bankruptcy liquidation wherein the Indivos
14 intellectual property is exchanged for a contingent payment that is predicated on the ability
15 of Solidus to raise additional financing." (See Slater Decl. Ex. 87 ¶ 12 (emphasis added).)
16 Indivos interprets these statements as concessions by Hoffman and Kamarei that Indivos
17 owns the "tokenless biometric patents."

18 **c. Other statements**

19 **1. November 12, 2002 meeting with Solidus**

20 Goldberg attests that on November 12, 2002, Hoffman and Goldberg met with
21 Solidus, at which meeting Hoffman "touted the strength of Indivos' patent portfolio to
22 Solidus." (See Goldberg Decl. ¶ 9.)

23 **2. April 2003 emails**

24 Goldberg attests that on April 4, 2003, Hoffman forwarded an email from Kamarei to
25 all Indivos shareholders requesting that they rescind their consents to the merger, in which
26 Kamarei states that he "was one of the four founders of Indivos" and "the patent attorney
27 who prosecuted many of the company's patents." (See Slater Decl. Ex. 85 (Goldberg
28 Decl.) ¶ 7) and Ex. 1 thereto (emphasis added).)

1 Goldberg also attests that on April 25, 2003, Hoffman sent an email to all Indivos
2 shareholders complaining about the proposed merger with Solidus, in which he referred to
3 "our access to powerful patents" and "Indivos' tokenless biometric system" (see id. ¶ 8 and
4 Ex. 2 thereto), and warned Indivos shareholders that if the Solidus merger occurred,
5 "Solidus takes the patents, and all of our shareholder equity evaporates." (See id. at 4.)
6 An attachment to that email contains a list of alleged malfeasances by the Indivos' Board,
7 which, Hoffman asserts, were done "with the conscious intention to destroy the Company
8 and to secure the Company's intellectual property for themselves in liquidation or other
9 distribution in bankruptcy." (See id. at 15.)

10 These statements, Indivos contends, conflict with the allegations of the complaint in
11 the instant action, in which Excel alleges that Indivos had only a license in the patents and
12 that such license already had been terminated by November 2002. (See FAC ¶¶ 16, 43.)

13 **19. Hoffman's 2/3/03 Assignment of Patents from Indivos to Excel**

14 On February 3, 2003, Hoffman executed an assignment from Indivos to Excel of,
15 inter alia, the fourteen subject patents that had been issued as of that date, for
16 consideration of one dollar. (See Johnson Decl. Ex. F.) The assignment is signed "Ned
17 Hoffman, President Excel for Indivos Corporation." (See id.) The assignment was
18 recorded with the PTO on the same date. (See id.) The assignment begins: "WHEREAS,
19 Indivos . . . is owner of the invention as described and set forth in the below-identified
20 United States Letters Patents" (See id.)

21 Indivos argues that Hoffman had not been employed by Indivos since 2000, and
22 thus had no legal authority to act on Indivos' behalf. Excel contends that Hoffman was
23 authorized to assign the patents from Indivos to Excel as a result of Indivos' breach of the
24 IP-Patent License provision that a material breach of that license by Indivos' predecessor,
25 SmartTouch, would result in the automatic rescission of the patent assignments. (See
26 Slater Decl. Ex. 24 § 6.5.)

27 **C. The Instant Motions**

28 Both sides have filed cross-motions for summary judgment on the issue of patent

1 ownership. Excel's motion, in which Hoffman and-Aviv LLC have joined, is for summary--
2 judgment on the issue of ownership of the '277 and '012 patents only. The motion filed by
3 Indivos and Solidus is for summary judgment on the issue of ownership of all of the subject
4 patents.⁹

5. LEGAL STANDARD

6 Rule 56(c) of the Federal Rule of Civil Procedure provides that summary judgment
7 "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and
8 admissions on file, together with the affidavits, if any, show that there is no genuine issue
9 as to any material fact and that the moving party is entitled to judgment as a matter of law."
10 See Fed. R. Civ. P. 56(c). Material facts are those that may affect the outcome of the case.
11 See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a material
12 fact is "genuine" if there is sufficient evidence for a reasonable jury to return a verdict for
13 the nonmoving party. See id. The Court may not weigh the evidence. See id. at 255.
14 Rather, the nonmoving party's evidence must be believed and "all justifiable inferences
15 must be drawn in [the nonmovant's] favor." See United Steelworkers of Am. v. Phelps
16 Dodge Corp., 865 F.2d 1539, 1542 (9th Cir. 1989) (en banc) (citing Liberty Lobby, 477 U.S.
17 at 255).

18 The moving party bears the initial responsibility of informing the district court of the
19 basis for its motion and identifying those portions of the pleadings, depositions,
20

21 ⁹ The parties have filed multiple declarations in support of their respective motions.
22 On April 5, 2004, Indivos and Solidus filed an objection to various portions of the
23 declaration of Thomas F. Smegal, Jr., on the ground that those portions consist of
24 inadmissible legal conclusions. On May 13, 2004, Excel filed a statement of nonopposition
25 in which it states that it "does not oppose defendants' objections to the Declaration of
26 Thomas F. Smegal, Jr. and agrees that it should be disregarded in connection with
27 plaintiff's motion for summary judgment and for any other purpose." (See Plaintiff's
28 Statement of Non-Opposition to Defendants' Objections to the Smegal Declaration in
Support of Plaintiff's Motion for Summary Judgment, filed May 13, 2004, at 1.) Accordingly,
defendants' objections to the Smegal declaration are SUSTAINED.

On May 13, 2004, Excel filed voluminous boilerplate objections to evidence
submitted by defendants in connection with the instant motions for summary judgment. To
the extent the Court has relied on any of the evidence to which Excel objects, those
objections are deemed OVERRULED. To the extent, the Court has not relied on the
evidence to which Excel objects, those objections are DENIED as MOOT.

1 interrogatory answers, admissions and affidavits, if any, that it believes demonstrate the
2 absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317,
3 323 (1986). Where the nonmoving party will bear the burden of proof at trial, the moving
4 party's burden is discharged when it shows the Court that there is an absence of evidence
5 to support the nonmoving party's case. See id. at 325.

6 Where the moving party "bears the burden of proof at trial, he must come forward
7 with evidence which would entitle him to a directed verdict if the evidence went
8 uncontroverted at trial." See Houghton v. South, 965 F.2d 1532, 1536 (9th Cir. 1992)
9 (citations omitted); see also Fontenot v. Upjohn, 780 F.2d 1190, 1194 (5th Cir. 1986)
10 (holding when plaintiff moves for summary judgment on an issue upon which he bears the
11 burden of proof, "he must establish beyond peradventure all of the essential elements of
12 the claim . . . to warrant judgment in his favor.").

13 A party opposing a properly supported motion for summary judgment "may not rest
14 upon the mere allegations or denials of [that] party's pleading, but . . . must set forth
15 specific facts showing that there is a genuine issue for trial." See Fed. R. Civ. P. 56(e); see
16 also Liberty Lobby, 477 U.S. at 250. The opposing party need not show that the issue will
17 be resolved conclusively in its favor. See Liberty Lobby, 477 U.S. at 248-49. All that is
18 necessary is submission of sufficient evidence to create a material factual dispute, thereby
19 requiring a jury or judge to resolve the parties' differing versions of the truth at trial. See id.

20 DISCUSSION

21 This case hinges on the interpretation of numerous documents purporting to assign
22 rights in the inventions and patents at issue. The Court begins its analysis by setting forth
23 general legal principles applicable to the interpretation of any such assignment or
24 agreement.

25 A. Legal Standard – Assignment of Inventions and Patents

26 "[I]t is settled law that between the time of an invention and the issuance of a patent,
27 rights in an invention may be assigned and legal title to the ensuing patent will pass to the
28 assignee upon grant of the patent." See Filmtec Corp. v. Allied-Signal, Inc., 939 F.2d 1568,

1 1572 (Fed. Cir. 1991). Future inventions also may be assigned; a present assignment of
2 rights to a future invention is considered to be an assignment of an expectant interest, and
3 "[i]n such a situation, the assignee holds at most an equitable title in the future invention."
4 See id. "Once the invention is made and an application for patent is filed, however, legal
5 title to the rights accruing thereunder would be in the assignee (subject to the rights of a
6 subsequent purchaser under § 261)¹⁰ and the assignor-inventor would have nothing
7 remaining to assign." Id. "[N]o further act would be required once the invention came into
8 being; the transfer of title would occur by operation of law." Id. at 1573.¹¹

9 An assignment of a patent, application for a patent, or any interest therein must be
10 made in writing. See 35 U.S.C. § 261. "A conveyance of interests in a patent typically
11 constitutes either an assignment or a mere license." Minco, Inc. v. Combustion
12 Engineering, Inc., 95 F.3d 1109, 1116 (Fed. Cir. 1996). "An assignment of patent rights
13 operates to transfer title to the patent, while a license leaves title in the patent owner." Id.
14 (citing Waterman v. Mackenzie, 138 U.S. 252, 255 (1891)). "To create an assignment, a
15 contract must transfer: (1) the entire exclusive patent right, (2) an undivided interest in the
16 patent rights, or (3) the entire exclusive right within any geographical region of the United
17 States." Id. at 1117 (citing Waterman, 138 U.S. at 255). "An agreement that does not
18 transfer one of these three interests is merely a license." Id.

19 "To determine whether a provision in an agreement constitutes an assignment or a
20 licence, one must ascertain the intention of the parties and examine the substance of what
21 was granted." Vaupel Textilmaschinen KG v. Meccanica Euro Italia, S.P.A., 944 F.2d 870,
22 874 (Fed. Cir. 1991). "Whether a transfer constitutes a sale or license is determined by

23
24 ¹⁰ An assignment of a patent or an application for a patent is "void as against any
25 subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it
is recorded in the Patent and Trademark Office within three months from its date or prior to
the date of such subsequent purchase or mortgage." See 35 U.S.C. § 261.

26
27 ¹¹ By contrast, an agreement to assign, in the future, rights to an invention not yet
developed "may vest the promisee with equitable rights in those inventions once made,
[but] such an agreement does not by itself vest legal title to patents on the inventions in the
28 promisee." See Arachnid, Inc. v. Merit Industries, Inc., 939 F.2d 1574, 1581 (Fed. Cir.
1991).

1 the substance of the transaction and a transfer will suffice as a sale if it appears from the
2 agreement and surrounding circumstances that the parties intended that the patentee
3 surrender all his substantial rights to the invention." See id. (quoting Bell Intercontinental
4 Corp. v. United States, 381 F.2d 1004, 1011 (Ct. Cl. 1967) (emphases in original)).

5 In construing a contract that purports to assign or license patent rights, the Court
6 applies state contract law. See Minco, 95 F.3d at 1117 (holding that "the proper
7 construction of the assignment agreements . . . is a matter of state contract law" and
8 applying Tennessee law); see also Regents of the University of New Mexico v. Knight, 321
9 F.3d 1111, 1118 (Fed. Cir. 2003) (holding "[s]tate law governs contractual obligations and
10 transfers of property rights, including those relating to patents" and applying New Mexico
11 law); see also Beghin-Say Int'l Inc. v. Rasmussen, 733 F.2d 1568, 1572 (Fed. Cir. 1984)
12 (holding action seeking declaration that assignment of patents was valid failed to raise
13 federal question and noting, "[T]he outcome of the present contract action, however it may
14 be decided in a state court or under state law, is a matter of monumental disinterest to the
15 federal government").

16 Under California law, the interpretation of a contract is "solely a judicial function . . .
17 unless the interpretation turns upon the credibility of extrinsic evidence." See Parsons v.
18 Bristol Development Co., 62 Cal. 2d 861, 865 (1965). A contract "must be so interpreted
19 as to give effect to the mutual intention of the parties as it existed at the time of contracting,
20 so far as the same is ascertainable and lawful." See Cal. Civ. Code § 1636. "A court must
21 ascertain and give effect to this intention by determining what the parties meant by the
22 words they used." See Pacific Gas and Electric Co. v. G.W. Thomas Drayage & Rigging
23 Co., Inc., 69 Cal. 2d 33, 38 (1968). Although "extrinsic evidence is not admissible to add
24 to, detract from, or vary the terms of a written contract, these terms must first be
25 determined before it can be decided whether or not extrinsic evidence is being offered for a
26 prohibited purpose." See id. at 39. "The fact that the terms of an instrument appear clear
27 to a judge does not preclude the possibility that the parties chose the language of the
28 instrument to express different terms." Id. Thus, "rational interpretation requires at least a

1 preliminary consideration of all credible evidence offered to prove the intention of the
2 parties," including evidence of the circumstances surrounding the making of the agreement.
3 See id. If the court decides, after considering this evidence, that the language of a contract
4 is fairly susceptible to at least one of the two interpretations respectively urged by the
5 parties, extrinsic evidence relevant to prove either of such meanings is admissible. See id.
6 at 40. "A rule that would limit the determination of the meaning of a written instrument to its
7 four-corners merely because it seems to the court to be clear and unambiguous, would
8 either deny the relevance of the intention of the parties or presuppose a degree of verbal
9 precision and stability our language has not attained." Id. at 37.

10 "A contract may be explained by reference to the circumstances under which it was
11 made, and the matter to which it relates." See Cal. Civ. Code § 1647. The terms of the
12 contract always "may be explained or supplemented by . . . [the parties'] course of
13 performance." See Cal. Civ. Proc. Code § 1856(c).

14 The ambiguity of a contract "may be exposed by extrinsic evidence that reveals
15 more than one possible meaning." See Pacific Gas and Electric, 69 Cal. 2d at 40 n.7.
16 "[W]hen a contract is ambiguous, a construction given to it by the acts and conduct of the
17 parties with knowledge of its terms, before any controversy has arisen as to its meaning, is
18 entitled to great weight, and will, when reasonable, be adopted by the court." See
19 Universal Sales Corp., Ltd. v. California Press Mfg. Co., 20 Cal. 2d 751, 761 (1942). "[A]
20 practical construction placed by the parties upon the instrument is the best evidence of their
21 intention." See id. at 761-62. "Parties are far less liable to have been mistaken as to the
22 intention of their contract during the period while harmonious and practical construction
23 reflects that intention, than they are when subsequent differences have impelled them to
24 resort to law, and one of them then seeks a construction at variance with the practical
25 construction they have placed upon it." Id. In sum, as the California Supreme Court has
26 noted: "[E]ven if it be assumed that the words [of a contract] standing alone might mean
27 one thing to [the court], where the parties have demonstrated by their actions and
28 performance that to them the contract meant something quite different, the meaning and

1 intent of the parties should be enforced. In such a situation, the parties by their actions
2 have created the 'ambiguity' required" to allow [the court] to consider the parties' course of
3 performance, and their practical construction of the agreement prior to litigation, in
4 interpreting the contract. See Crestview Cemetery Ass'n v. Dieden, 54 Cal. 2d 744, 754
5 (1960).

6 **B. Inventors' Rights**

7 Regardless of the extent to which the inventors (Hoffman, Pare, Lee, and Lapsley)
8 may have retained rights in their inventions as a result of their employment and/or
9 consulting agreements, each of them subsequently unconditionally assigned to Indivos'
10 predecessors, in writing and in some instances repeatedly, any rights they might have
11 retained in the patents at issue. (See Def. Ev. 1C-14C, filed August 29, 2003; see also
12 Slater Decl. Exs. 6, 10, 57, 61-64.) In other words, to the extent the inventors ever had any
13 rights in the patents, those rights have been assigned to defendants. Thus, the only way
14 Excel can prevail is by demonstrating that Omnilock retained rights in the inventions that it
15 never assigned to Indivos' predecessors.

16 **C. Omnilock's Rights**

17 Assuming Omnilock ever had any rights in the patents at issue as a result of the
18 inventors' employment and/or consulting agreements, the only documents showing any
19 attempt by Omnilock to transfer any portion of those rights to anyone else are the May 8,
20 1995 IP-Patent License and the June 16, 1995 Operating Agreement for SmartTouch LLC.
21 Defendants vigorously challenge the authenticity of the May 8, 1995 IP-Patent License and
22 the evidence on that matter is in dispute. If Omnilock assigned all of its rights in the patents
23 to SmartTouch LLC in the Operating Agreement, however, the authenticity, or lack thereof,
24 of the May 8, 1995 IP-Patent License is immaterial.

25 Accordingly, the Court begins its analysis with the June 16, 1995 Operating
26 Agreement for SmartTouch LLC, which postdates the May 8, 1995 IP-Patent License. In
27 the Operating Agreement, Omnilock agreed to transfer to SmartTouch LLC "patent and
28 other property rights to certain technology relating to fingerprint identification" in exchange

1 for a 99% interest in SmartTouch LLC. (See Slater Decl. Ex. 11 § 3.2 ("Omnilock shall--
2 contribute that property more fully described on Exhibit A") and Ex. A.¹²)

3 Excel argues that the language of Exhibit A to the June 16, 1995 Operating
4 Agreement lacks sufficient specificity, as a matter of law, to constitute a valid assignment of
5 Omnilock's rights to any of the patents. The Ninth Circuit has held that "[a]n assignment of
6 a patent must be in writing to fulfill the requirements of the federal statute, and though no
7 particular form of words is required, the instrument of transfer must be unambiguous and
8 show a clear and unmistakable intent to part with the patent; it must express intention to
9 transfer ownership." See United States v. Solomon, 825 F.2d 1292, 1296 (9th Cir. 1987)
10 (quoting 5 Lipscomb's Walker on Patents, § 19:7 (3d ed. 1986)). Excel argues that the
11 language of the June 16, 1995 Operating Agreement is not clear enough to demonstrate an
12 intent to transfer ownership of any patents. Excel also argues that, at most, the Operating
13 Agreement transfers rights to only part of the technology encompassed by the pending
14 patent applications, and that a transfer of fewer than all of the rights granted in a patent is,
15 as a matter of law, only a license.

16 Excel is correct that if the patents covered technology other than fingerprint
17 identification, Omnilock could not validly assign only the portion of the patent rights that
18 governed fingerprint technology. "To create an assignment, a contract must transfer: (1)
19 the entire exclusive patent right, (2) an undivided interest in the patent rights, or (3) the
20 entire exclusive right within any geographical region of the United States." See Minco, 95
21 F.3d at 1117 (citing Waterman, 138 U.S. at 255.) "An agreement that does not transfer one
22 of these three interests is merely a license." Id.; see also Pope Mfg. Co. v. Gormully &
23 Jeffery Mfg. Co., 144 U.S. 248, 252 (1892) (holding patent owner cannot assign individual
24 patent claims so as "to split up his title within the same territory into as many different parts
25 as there are claims").

26 By granting to SmartTouch LLC "patent and other property rights to certain
27

28 ¹² Omnilock's contribution of assets to Smart Touch LLC is not defined in additional
detail elsewhere in the agreement.

1 technology relating to fingerprint identification" (see Slater Decl. Ex. 11 § 3.2 and Ex. A),
2 the language of the Operating Agreement "clearly and unmistakably" demonstrates
3 Omnilock's intent to transfer patent rights to SmartTouch LLC. The precise scope of those
4 rights is arguably unclear, however, without reference to extrinsic evidence elucidating the
5 parties' intent.

6 In that regard, the Court notes, at the outset, that neither party has submitted any
7 direct evidence with respect to the intent of the parties in drafting the above-quoted
8 language. Hoffman had no recollection at his deposition as to what the language in Exhibit
9 A meant. (See Slater Decl. Ex. 1 (Hoffman Dep.) at 113:20-114:25.) Omnilock's counsel,
10 Maier, testified at deposition that he had "only a very dim memory of having worked on" the
11 Operating Agreement, could not recall who prepared the first draft,¹³ and could not recall
12 any specific section that he might have worked on. (See Slater Decl. Ex. 26 (Maier Dep.)
13 at 96:6-11.) He had no recollection of any drafting instruction from any party. (See *id.* at
14 97:14-23.) Neither party submitted any relevant testimony from SmartTouch LLC's
15 counsel, Kamarei.

16 The Court thus turns to evidence surrounding the making of the agreement, and the
17 parties' course of performance under the agreement, see Vaupel, 944 F.2d at 874 (holding
18 court may consider "surrounding circumstances" in determining whether document is
19 assignment or license),¹⁴ and as discussed below, concludes that the parties, in using the
20 words "fingerprint identification" did not intend thereby to transfer less than all of the rights
21 granted in the patents at issue.

22 First, the Court notes that Hoffman's September 22, 1994 memorandum, by which
23 he disclosed his invention to Omnilock, describes his invention as "[c]ombining the use of
24 finger print recognition technology with a multi-digit Personal Identification Number ('PIN')
25 to process credit card, telephone card, and ATM consumer transactions." (See Stamp
26

27 ¹³ Maier offered no testimony as to who prepared any subsequent drafts.

28 ¹⁴ See also Cal. Civ. § 1647; Cal. Civ. Proc. Code § 1856(c).

1 Decl. Ex. 2.) Similarly, Pare and Lee attest that the focus of their work with Hoffman and
2 Omnilock "was to develop a biometric system that would recognize an individual's
3 fingerprint so that, for example, an individual could pay for an item at a store by using his or
4 her fingerprint rather than a credit card." (See Lee Decl. ¶ 3; Pare Decl. ¶ 3.) Pare and
5 Lee also attest in their declarations that they formed SmartTouch LLC with Hoffman in
6 order that SmartTouch LLC "would both own the biometric patents and develop and market
7 the biometric products that we would later develop." (See Lee Decl. ¶ 5; Pare Decl. ¶ 5;
8 see also Slater Decl. Ex. 17 (March 30, 1995 letter agreement between Hoffman, Pare, and
9 Lee, noting that their new company would be "dedicated to commercializing the
10 Technology.") There is no evidence that Omnilock intended to transfer only the portions of
11 the inventions relating to fingerprint technology and not, for example, those relating to voice
12 recognition, and retinal scans. There is no evidence that Omnilock ever attempted to
13 develop the inventions in any way after transferring its "patent and other rights" to
14 SmartTouch LLC. Given all of the above, and the absence of any evidence to the contrary,
15 the Court interprets the phrase "technology relating to fingerprint identification," (see Slater
16 Decl. Ex. 11 at Ex. A), to be a short-hand reference to all of the technology covered by the
17 patents at issue.¹⁵

18 This construction is supported by the May 12, 1995 letter from Maier to Hoffman, in
19 which Maier informed Hoffman that the draft Operating Agreement could be revised "fairly
20 easily after the existing technology is transferred to SmartTouch," (see Slater Supp. Decl.
21 Ex. E (emphasis added)), which suggests that the parties intended to transfer all of the
22 technology to SmartTouch LLC. It is also confirmed by the terms of the August 1997
23 Contribution Agreement ("Contribution Agreement"), by which SmartTouch LLC transferred
24 assets to SmartTouch, Inc. and specifically identified the assets of SmartTouch LLC to
25 include "Assignee Rights to the '012 and '277 patents," "All Assignee Rights to U.S. Patent
26 Applications" and "Any and All Other Assets of SmartTouch, LLC." (See Slater Decl. Ex. 12
27

28 ¹⁵ The preceding word "certain" distinguishes that technology from technology
developed by other inventors in the field not affiliated with Omnilock.

1 at 1.) It is significant that the Contribution Agreement was signed by Hoffman on behalf of
2 both SmartTouch LLC and SmartTouch, Inc., thus indicating his understanding of the
3 nature and extent of the assets previously transferred to SmartTouch LLC by Omnilock.
4 Hoffman attested, in that document:

5 SmartTouch owns the Assets free and clear of all liens, pledges,
6 encumbrances, claims, equities, conditions, and rights of others of any kind or
7 nature whatsoever. SmartTouch has full power and authority to so transfer
the Assets, without the consent or approval of any other person or entity.

8 (See id. at 1.)¹⁶ As Hoffman listed all of the existing patents and patent applications in the
9 Contribution Agreement, and stated that SmartTouch LLC owned those assets in their
10 entirety, and as the parties have submitted no other document executed between the date
11 of the June 16, 1995 Operating Agreement and the date of the Contribution Agreement by
12 which Omnilock purported to contribute any assets to SmartTouch LLC, the Contribution
13 Agreement indicates Hoffman's understanding, at a time predating the current litigation,
14 that Omnilock had contributed all of its rights in the inventions to SmartTouch LLC in the
15 June 16, 1995 Operating Agreement. "Parties are far less liable to have been mistaken as
16 to the intention of their contract during the period while harmonious and practical
17 construction reflects that intention, than they are when subsequent differences have
18 impelled them to resort to law, and one of them then seeks a construction at variance with
19 the practical construction they have placed upon it." Universal Sales Corp., 20 Cal. 2d
20 at 761.

21 Even if one assumes that the May 8, 1995 IP-Patent License is authentic, and that
22 Omnilock thereby granted only a conditional license in the technology to SmartTouch LLC,
23 the Court's interpretation of the June 16, 1995 Operating Agreement is not inconsistent with
24

25 ¹⁶ Excel expressly consented in writing, in a document dated April 4, 1997 and
26 entitled "Consent to the Sale of Assets and Dissolution of SmartTouch LLC" ("Consent"), to
27 SmartTouch LLC's assignment of assets to SmartTouch, Inc. (See Slater Decl. Ex. 60.)
28 The Consent provides: "The Manager is hereby authorized to contribute all of the
Company's assets to SmartTouch, Inc., a Delaware corporation[.]" (See id. at 1.) The
Consent is signed by "Ned Hoffman, President" on behalf of Excel, and by Hoffman on his
own behalf. (See id. at 2.)

1 the execution of that document. By the terms of Omnilock's February 17, 1994
2 employment agreement with Hoffman, any rights Omnilock had in Hoffman's inventions
3 would revert to Hoffman if Omnilock failed to license the technology to a "bona fide third
4 party" within two years. (See Slater Decl. Ex. 4, § 2.03(c).) There is no evidence in the
5 record that Omnilock ever licensed the technology to any person or entity other than
6 SmartTouch LLC. Although the Court makes no finding as to whether SmartTouch LLC
7 qualifies as a "bona fide third party" under the terms of Hoffman's employment agreement,
8 if Omnilock and SmartTouch did in fact enter into the IP-Patent License, it was reasonable
9 for Omnilock to have done so to "lock in" its rights to Hoffman's inventions prior to assigning
10 those rights to SmartTouch LLC in the June 16, 1995 Operating Agreement.

11 Finally, even if the evidence were entirely ambiguous as to the parties' intent in
12 drafting the contribution language of Exhibit A to the June 16, 1996 Operating Agreement,
13 such that the Court could interpret the language to be either an assignment of all rights in
14 the patents, or merely a license to certain portions of the patent rights, the Court
15 nonetheless would construe the agreement as set forth above. Under California law, "when
16 different constructions of a provision are otherwise equally proper, that is to be taken which
17 is most favorable to the party in whose favor the provision was made." See Cal. Civ. Proc.
18 § 1864.¹⁷ It cannot be disputed that a key purpose of the agreement was to establish the
19 amount of Hoffman's and Omnilock's initial contributions to the newly formed SmartTouch
20 LLC and to empower SmartTouch LLC to commercialize the inventors' technology.
21 Mendelsohn, Excel's former Chairman, testified at deposition that "it would be very difficult
22 to raise money . . . for SmartTouch, unless there was clear title to the patent work that they
23 were relying upon to commercialize their services," such that SmartTouch LLC had
24 "unrestricted rights to use it . . . in perpetuity." (See Stamp Decl. Ex. 3 (Mendelsohn Dep.)
25 at 13:4-12.) Under these circumstances, the Court concludes that the amount of

26
27 ¹⁷ Another rule of construction under California law is that ambiguous provisions in a
28 contract are to be construed against the party who drafted them. See Cal. Civ. Code
§ 1654. As noted above, however, there is no evidence before the Court with respect to
how the language at issue was chosen.

1 Omnilock's contribution to SmartTouch LLC was intended to benefit SmartTouch LLC.
2 Accordingly, any ambiguity as to precisely what assets Omnilock contributed to
3 SmartTouch LLC must be resolved in favor of SmartTouch LLC, the creation of which was
4 the very purpose of the agreement. See Mitchell v. Exhibitions Foods, Inc., 184 Cal. App.
5 3d 1033, 1041-43 (1986) (interpreting "apparent stalemate resulting from an arguably
6 ambiguous contractual provision" in favor of the party who benefited the most from the
7 provision).

8 As the evidence of the parties' intent is not in dispute, the Court concludes, as a
9 matter of law, that Omnilock's contribution to SmartTouch LLC in the June 16, 1995
10 Operating Agreement consisted of all of Omnilock's rights to the technology covered by the
11 patents at issue, not just the patent rights to fingerprint identification technology.

12 D. Conclusion

13 The Court finds, as a matter of law, that each of the inventors of the patents at issue
14 – Hoffman, Pare, Lee and Lapsley – at one time or another, unconditionally assigned all of
15 his rights in those patents to Indivos' predecessors, and that Omnilock contributed all of its
16 rights in the patents to Indivos' predecessor SmartTouch LLC in the June 16, 1995
17 Operating Agreement. Accordingly, no material dispute of fact exists with respect to
18 ownership of the patents at issue in the above-titled action, and the Court will grant
19 defendants' motion for partial summary judgment, and deny Excel's motion for partial
20 summary judgment.

21 E. Rule 56(f) Request

22 In Excel's opposition to defendants' motion for summary judgment, it states, in a
23 footnote:

24 Excel files this opposition to Defendants' Motion based on the discovery that
25 has occurred to date, which constitutes discovery solely initiated by
26 defendants (10 depositions and a number of document subpoenas). In the
27 event that the Court determines that Defendants have met their burden,
28 Plaintiff requests that pursuant to Rule 56(f), the motion be deemed
premature and that plaintiffs be allowed to conduct discovery regarding the

1 newly relied-upon equitable claims.¹⁸
2 (See Excel's Corrected Memorandum in Opposition to Indivos and Solidus' Motion for
3 Summary Judgment Regarding Patent Ownership, filed April 25, 2004, at 16 n.18.) On
4 May 13, 2004, the day before the hearing on the motions, Excel filed a Rule 56(f)
5 Declaration of Jefferson Stamp, in which Excel requests that the Court, before ruling on the
6 summary judgment motions, permit Excel to conduct depositions of Robert Goldberg, Larry
7 Ginsburg, Phil Gioia, Robert Fortuna, and Howard Rice "relating to their knowledge about
8 the relationship of Excel to the patents, their knowledge of the May 8, 1995 license
9 agreement, the basis for their belief that SmartTouch owned the patents, their investigation
10 of whether SmartTouch owned the patents, and a 30(b)(6) deposition of both Indivos and
11 Solidus on the same topics," to complete the deposition of Phil Lapsley "in which Excel has
12 never had an opportunity to ask questions," and to submit document requests relating to
13 the above. (See Stamp 56(f) Decl. ¶¶ 4-6.) Stamp also notes that Indivos produced certain
14 allegedly relevant documents on April 9, 2004, which, according to Stamp, should have
15 been produced earlier. (See id. ¶¶ 6(d)-(f).)

16 Rule 56(f) of the Federal Rules of Civil Procedure provides: "Should it appear from
17 the affidavits of a party opposing the motion that the party cannot for reasons stated
18 present by affidavit facts essential to justify the party's opposition, the court may refuse the
19 application for judgment or may order a continuance to permit affidavits to be obtained or
20 depositions to be taken or discovery to be had or may make such other order as is just."
21 Fed. R. Civ. P. 56(f). A party seeking a continuance "must show how additional discovery
22 would preclude summary judgment and why a party cannot immediately provide 'specific
23 facts' demonstrating a genuine issue of material fact." See Mackey v. Pioneer Nat'l Bank,
24 867 F.2d 520, 524 (9th Cir. 1989). The party seeking a continuance must specifically
25 identify relevant existing information that he needs, and make clear how that information
26 would preclude summary judgment. See id.; see also Wellman v. Writers Guild of Am.,
27

28 ¹⁸ The Court's ruling does not rely on defendants' equitable claims.

1 West, Inc., 146 F.3d 666, 674 (9th Cir. 1998) (holding district court did not err by denying—
2 Rule 56(f) motion where, inter alia, plaintiff did not explain how information he sought would
3 preclude summary judgment). “The district court does not abuse its discretion by denying
4 further discovery if the movant has failed diligently to pursue discovery in the past, or if the
5 movant fails to show how the information sought would preclude summary judgment.”
6 Employers Teamsters Local Nos. 175 and 505 Pension Trust Fund v. Clorox Co., 353 F.3d
7 1125, 1130 (9th Cir. 2004) (quoting Cal. Union Ins. Co. v. Am. Diversified Sav. Bank, 914
8 F.2d 1271, 1278 (9th Cir. 1990)).

9 Excel has neither diligently pursued discovery nor shown how the information sought
10 would preclude summary judgment. On October 23, 2003, the Court granted defendants’
11 motion for a Rule 56(f) continuance of Excel’s motion for summary judgment on patent
12 ownership, vacated the October 24, 2003 hearing on the motion, and ordered that the
13 parties “may refile motions for summary judgment on the issue of patent ownership once
14 sufficient discovery has been taken.” (See Order, filed Oct. 23, 2003 at 1.) Excel filed a
15 new motion for summary judgment on the issue of patent ownership on March 12, 2004,
16 yet acknowledges in its opposition to defendants’ motion for summary judgment that it has
17 chosen to take no discovery at all. (See Opp. at 16 n.18.) Having filed a new motion for
18 summary judgment without taking any discovery in the more than four months since the
19 Court granted defendants’ motion for a Rule 56(f) continuance, Excel cannot now complain
20 that it needs more discovery to oppose defendants’ cross-motion on the same issues.

21 Furthermore, Excel has failed to adequately explain how the discovery it wishes to
22 take will preclude summary judgment. Stamp attests that the discovery Excel wishes to
23 take will “provide additional evidence to support the fact that Indivos had full knowledge of
24 Excel’s superior and controlling rights to the patents, and that Excel is the legitimate owner
25 of the patents.” (See Stamp Rule 56(f) Decl. ¶ 6(f).) Excel does not explain what new
26 information it suspects the witnesses it seeks to depose are likely to have, or why it
27 believes that such information exists. The party seeking discovery bears the burden of
28 “proffer[ing] sufficient facts to show that the evidence sought exists, and that it would

1 prevent summary judgment." See Employers Teamsters Local Nos. 175 and 505 Pension
2 Fund, 353 F.3d at 1129-30 (quoting Chance v. Pac-Tel Teletrac, Inc., 242 F.3d 1151, 1161
3 n. 6 (9th Cir. 2001)). Excel has not done so.

4 With respect to the documents that were allegedly untimely produced by Indivos,
5 Excel acknowledges that it has had those documents since April 9, 2004. (See Stamp Rule
6 56(f) Decl. ¶ 6(d).) Excel has set forth no explanation why it was unable to review those
7 documents in the month since they have been produced, and still has not submitted any of
8 them to the Court.

9 Accordingly, for all of the above-stated reasons, the Court DENIES Excel's "motion,"
10 contained in a footnote in its opposition brief, for a Rule 56(f) continuance.

11 CONCLUSION

12 For the reasons set forth above,

13 1. Excel's motion for partial summary judgment on the issue of ownership of the
14 '277 and '012 patents is DENIED.

15 2. Defendants' motion for partial summary judgment on the issue of patent
16 ownership of all of the patents at issue is GRANTED, and, accordingly, defendants own
17 each of the fifteen patents at issue in this lawsuit.

18 3. Excel's request for a Rule 56(f) continuance is DENIED.

19 This order terminates docket nos. 139 and 178.

20 IT IS SO ORDERED.

21 Dated: May 27, 2004

/s/ Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge

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JONATHAN E. SOMMER (SBN 209179)
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6 Attorneys for INDIVOS CORPORATION and
SOLIDUS NETWORKS, INC.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 EXCEL INNOVATIONS, INC.,
12 Plaintiff,
13 v.
14 INDIVOS CORPORATION, SOLIDUS
NETWORKS, INC., and DOES 1 TO 100,
15 inclusive,
16 Defendants.
17

No. C 03-03125 (MMC)

**INDIVOS CORPORATION AND
SOLIDUS NETWORKS, INC.'S
NOTICE OF MOTION AND MOTION
FOR PARTIAL SUMMARY
JUDGMENT ON PATENT
OWNERSHIP**

DATE: May 7, 2004
TIME: 9:00 a.m.
JUDGE: The Hon. Maxine M. Chesney
LOCATION: Courtroom 7, 19th Floor

18 INDIVOS CORPORATION and SOLIDUS
19 NETWORKS, INC.,
20 Counterclaimants/
21 Counterdefendants,
22 v.
23 EXCEL INNOVATIONS, INC., NED
24 HOFFMAN, and AVIV LLC,
25 Counterdefendants/
Counterclaimants.
26
27
28

1 TO PLAINTIFF and COUNTERDEFENDANT EXCEL INNOVATIONS, INC.,
2 and COUNTERDEFENDANTS NED HOFFMAN, and AVIV LLC, AND THEIR
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE THAT on May 7, 2004, at 9:00 a.m., or as soon
5 thereafter as the matter may be heard, in Courtroom 7 of the United States District Court for the
6 Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California,
7 Defendants and Counterclaimants Indivos Corporation and Solidus Networks, Inc. (collectively,
8 "Defendants/Counterclaimants"), will and hereby do move this Court for an order granting
9 Defendants and Counterclaimants partial summary judgment on the issue of patent ownership for
10 the patents set forth herein and, accordingly, the entry of Judgment against Excel Innovations,
11 Inc. ("Excel"), Ned Hoffman ("Hoffman"), and Aviv LLC ("Aviv") on all their claims for relief
12 and affirmative defenses.

13 Indivos makes this motion on the grounds that there is no genuine issue of
14 material fact concerning the ownership of the patents. The undisputed evidence shows that the
15 patents belong to Indivos, not Excel, not Hoffman, and not Aviv, by virtue of unconditional
16 assignments transferring "all right, title and interest" to Indivos, signed by all of the Inventors
17 and duly recorded with the U.S. Patent and Trademark Office. Hoffman, Excel's President,
18 CEO, founder and controlling shareholder, continuously authored and signed documents from
19 confirming Indivos owned the patents under the assignments. In contrast, Hoffman/Excel cannot
20 point to one document in eight years where Excel's claim to ownership of the patents is even
21 raised until November 2002.

22 Legally, Hoffman/Excel's claim to the patents fails at least three different ways:
23 first, because any rights under the Consulting Agreements were superseded; second, the
24 subsequent documents, as well as Hoffman/Excel's conduct, waives their claim, and third, estops
25 them from denying Indivos's ownership.

26 Accordingly, Defendants/Counterclaimants request summary adjudication on the
27 issue of patent ownership, and, accordingly, the entry of Judgment:

28

1 (1) That Indivos owns patent nos.: 5,613,012, 5,615,277, 5,764,789, 5,802,199,
2 5,805,719, 5,838,812, 5,870,723, 6,012,039, 6,366,682, 6,230,148, 6,269,348, 6,192,142,
3 6,154,879, 6,397,198 and 6,581,042.

4 (2) in favor of Defendants/Counterclaimants on their First Claim for Relief
5 (declaratory judgment), and on the issue of patent ownership for their Second through Twentieth
6 Claims for Relief (patent infringement, intentional interference with prospective advantage,
7 violation of Lanham Act section 43(a), business disparagement/slander of title, and conspiracy);

8 (3) against Plaintiff and Counter-Defendant Excel on all its Claims for Relief
9 (patent infringement and breach of contract), all its Counterclaim Claims for Relief (declaratory
10 relief, breach of contract, and fraud) and all its Affirmative Defenses (failure of consideration,
11 frustration of purpose, breach of fiduciary duty, equitable estoppel, mistake, fraud, unclean
12 hands, waiver, statute of limitations/laches, failure to mitigate, and reservation of rights); and

13 (4) against Counter-Defendants Aviv and Hoffman on all their affirmative
14 defenses (failure of consideration, frustration of purpose, breach of fiduciary duty, equitable
15 estoppel, mistake, fraud, unclean hands, waiver, statute of limitations/laches, failure to mitigate,
16 and reservation of rights).

17 This motion is based on this Notice of Motion, the accompanying Memorandum
18 of Points and Authorities, the accompanying declarations of Mark K. Slater, Phil Gioia, Robert
19 Fortuno, Harold Silen, Jonathan Lee, Alexander C. Johnson, Jr., Larry P. Ginsburg, David Pare,
20 Robert Goldberg, the pleadings on file in this action and on such other evidence and argument as
21 may be presented by Indivos Corporation and Solidus Networks, Inc., at the hearing on the
22 Motion.

23 DATED: April 2, 2004

Respectfully submitted,

24 Bingham McCutchen LLP

25 By: /S/ Mark K. Slater
26 Mark K. Slater
27 Attorneys for Counterclaimants
Excel Innovations, Inc.

28



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

JULY 10, 2001

PTAS

MARGER JOHNSON & MCCOLLOM, P.C.
ALEXANDER C. JOHNSON, JR.
1030 S.W. MORRISON STREET
PORTLAND, OREGON 97205



101693522A

**UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT**

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PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 01/16/2001

REEL/FRAME: 011723/0657
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

LAPSLEY, PHILIP D.

DOC DATE: 06/08/2000

ASSIGNOR:

GIOIA, PHILIP J.

DOC DATE: 06/08/2000

ASSIGNOR:

KLEEMAN, MICHAEL

DOC DATE: 06/09/2000

ASSIGNEE:

SMARTTOUCH, INC.
727 ALLSTON WAY
BERKELEY, CALIFORNIA 94710

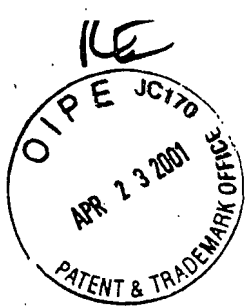
SERIAL NUMBER: 60208680
PATENT NUMBER:

FILING DATE: 05/31/2000
ISSUE DATE:

Exhibit DD

011723/0657 PAGE 2

TONYA LEE, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS



04-30-2001



101693522

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PROVISIONAL PATENT APPLICATION
Attorney's Do. No. 8514-50 (ST-A24)

MRD D

4.23.01

In Re Provisional Application of:

PHILIP D. LAPSLEY; PHILIP J. GIOIA; MICHAEL KLEEMAN

Serial No. 60/208,680

Filed: May 31, 2000

For: BIOMETRIC FINANCIAL TRANSACTION
SYSTEM AND METHOD

Box Assignment

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest: (1) **PHILIP D. LAPSLEY**, 6029 Hillegass Avenue, Oakland, California 94618; (2) **PHILIP J. GIOIA**, 6 Chickasaw Court, Corte Madera, California 94925; (3) **MICHAEL KLEEMAN**, 189 Madrone, Larkspur, California 94939-2113

2. Name and address of party(ies) receiving an interest: **SMARTTOUCH, INC.**, a Delaware corporation, 727 Allston Way, Berkeley, California 94710

3. Description of the interest conveyed: Assignment

Date of execution of attached document: (1) June 8, 2000; (2) June 8, 2000; (3) June 9, 2000.

4. Provisional Application No. 60/208,680 Additional sheet attached? No

5. Name and address of party to whom correspondence concerning document should be mailed:

Alexander C. Johnson, Jr.
MARGER JOHNSON & McCOLLOM, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

40E

6. Number of applications and patents involved: 1

7. Enclosed is our check for \$40.

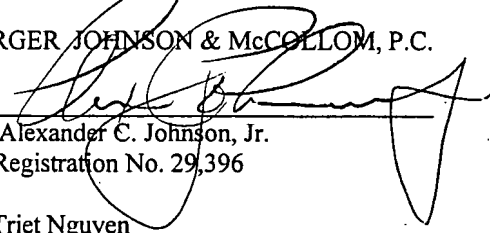
8. Any deficiency or overpayment should be charged or credited to deposit account number 13-1703.

9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

Dated: *17 April 2001*

By 
Alexander C. Johnson, Jr.
Registration No. 29,396

MARGER JOHNSON & McCOLLOM, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

cc: Triet Nguyen

Total number of pages comprising cover sheet and attached assignment: 5



PATENT APPLICATION
Attorney's Do. No. 8514-50 (ST-A24)

ASSIGNMENT

Assignor: **PHILIP D. LAPSLEY**
6029 Hillegass Avenue
Oakland, California 94618

PHILIP J. GIOIA
6 Chickasaw Court
Corte Madera, California 94925

MICHAEL KLEEMAN
189 Madrone
Larkspur, California 94939-2113

Assignee: **SMARTTOUCH, INC.,**
a Delaware corporation

Address: 727 Allston Way
Berkeley, California 94710

Title of
Invention: **BIOMETRIC FINANCIAL TRANSACTION SYSTEM AND METHOD**

U.S. Patent Application:

Application Serial No.: 60/208,680

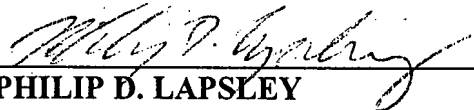
Filing Date: May 31, 2000

For good and valuable consideration, the receipt of which is hereby acknowledged, the above-named Assignor hereby sells, assigns and transfers to Assignee, the full and exclusive right, title and interest in and to the above-identified invention, patent application and patent rights throughout the world, including foreign patent priority rights; said invention, application

and letters patent in this or any foreign country, and all divisions, continuations, reissues and extensions thereof, to be held and enjoyed by Assignee, for its own use and benefit, and for its successors and assigns to the full end of the term for which letters patent may be granted in this or any foreign country, as fully and entirely as the same would have been held by Assignor had this assignment and sale not been made, and covenant that Assignor has full right so to do, and agree that Assignor will communicate to Assignee, or its successors and assigns, any facts known to Assignor respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing and reissue applications, make all rightful oaths, and do everything possible to aid Assignee, its successors and assigns to obtain and enforce proper patent protection for said invention in this or any foreign country.

In the event that the patent application filing date or serial number is not known at the time this document is executed, Assignor hereby grants permission to the attorneys of record in the patent application to fill in the filing date and/or serial number above, and to record this assignment after such information is added.

Executed at Berkeley, California, this 3rd day of June 2000.



PHILIP D. LAPSLEY

Assignor

STATE OF CALIFORNIA)
) ss.
County of _____)

Before me this _____ day of June, 2000, personally appeared the above-named individual, to me known to be the person who is described in and who executed the foregoing assignment instrument and acknowledged to me that he executed the same of his own free will for the purpose therein expressed.

Notary Public for California
My commission expires: _____

[SEAL]

Executed at Berkeley, California, this 8th day of June 2000.



PHILIP J. GIOIA

Assignor

STATE OF CALIFORNIA)
) ss.
County of _____)

Before me this _____ day of June, 2000, personally appeared the above-named individual, to me known to be the person who is described in and who executed the foregoing assignment instrument and acknowledged to me that he executed the same of his own free will for the purpose therein expressed.

Notary Public for California
My commission expires: _____

[SEAL]


MICHAEL KLEEMAN

STATE OF CALIFORNIA)
County of _____) ss.

Notary Public for California
My commission expires: _____

4-

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application No. 09/871,241

Examiner:

First Named Inventor: PHILIP J. GIOIA

Group: 2164

Filed: 30 May 2001

For: BIOMETRIC FINANCIAL TRANSACTION SYSTEM AND METHOD

TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

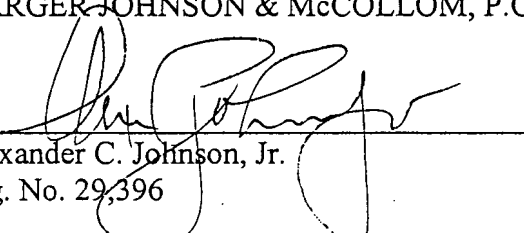
Enclosed for filing in the above-referenced U.S. Letters Patent/Application is:

1. Request to Exclude
2. Power of Attorney with accompanying listing of Indivos patent properties and recorded merger documents

Customer No.
20575

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

By 
Alexander C. Johnson, Jr.
Reg. No. 29,396

1030 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 222-3613

REQUEST TO EXCLUDE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 CFR § 3.71 (a), INDIVOS CORPORATION, assignee of the above-described patent applications/patents, hereby excludes Ned Hoffman and his companies, EXCEL INNOVATIONS, INC. and AVIV, LLC, and Otto Lee, Reg. No. 37,871, and Ali Kamarei, Reg. No. 37,000, and any persons acting on their behalf, from conducting prosecution, inspecting or granting powers to inspect or entering a power of attorney or changing address or taking any other action whatsoever in any of the above-referenced patents and patent applications.

Assignee INDIVOS CORPORATION has recorded an ANNULMENT OF ASSIGNMENT and STATEMENT THAT NED HOFFMAN LACKED AUTHORITY TO EXECUTE DOCUMENTS ON BEHALF OF INDIVOS CORPORATION in Reel/Frame 013986 / 0001 (97 pages) on September 16, 2003, against those properties referred to in the accompanying Power of Attorney.

Filed herewith is a new Power of Attorney designating the undersigned and other members of this firm as attorneys for INDIVOS CORPORATION. No other attorneys or persons are authorized to represent or act for INDIVOS CORPORATION in any of its patents or patent applications.

Respectfully submitted,

20575
Customer No.

MARGER JOHNSON & McCOLLOM, P.C.

By


Alexander C. Johnson, Jr.
Registration No. 29,396

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Portland, Oregon 97205
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 **COPY**

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST AND
REVOCATION OF PRIOR POWERS**

I, Mark G. Thompson, Treasurer of Indivos Corporation, a Delaware corporation, having a place of business at One Market Street, Spear Tower, Suite 4100, San Francisco, California 94105, a wholly owned subsidiary of Solidus Networks, Inc., having a place of business at One Market Street, Spear Tower, Suite 4100, San Francisco, California 94105, assignee of the entire right, title and interest of the U.S. Patents and Patent Applications described on the attached Exhibit, by virtue of the assignments from the inventors to SmartTouch, LLC, a limited liability company, SmartTouch, Inc., a Delaware corporation, VeriStar Corporation, a Delaware corporation, or Indivos Corporation, a Delaware corporation (Reel and Frame indicated on the attached Exhibit), and by virtue of the certificate of merger of Indivos Corporation with Indivos Acquisition Corp., which was a Delaware corporation and a wholly owned subsidiary of Solidus Networks, Inc., a copy of which is attached hereto, represent that I am empowered to sign on behalf of assignee.

As assignee of record of the entire interest of the above-identified application, all powers of attorney previously given are hereby revoked and the following attorneys and/or patent agents are hereby appointed to prosecute and transact all business in the Patent and Trademark Office connected therewith:

Customer Number 20575

<u>Attorney Name</u>	<u>Registration No.</u>
Elmer W. Galbi	19,761
Jerome S. Marger	26,480
Alexander C. Johnson, Jr.	29,396
Alan T. McCollom	28,881
James G. Stewart	32,496
Stephen S. Ford	35,139
Julie L. Reed	35,349
Scott A. Schaffer	38,610
Joseph S. Makuch	39,286
James E. Harris	40,013
Kevin S. Ross	42,116
Graciela G. Cowger	42,444
Ariel S. Rogson	43,054
Craig R. Rogers	43,888
Hillary Brooks	45,815
Clifford D. Weston	48,307
Todd J. Iverson	53,057

Direct all telephone calls to Alexander C. Johnson, Jr. at (503) 222-3613 and send all correspondence to:

Marger Johnson & McCollom, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205

INDIVOS CORPORATION,
a Delaware corporation,

Date: 8-8-03

By: Mark G. Thompson
Mark G. Thompson
Treasurer, Indivos Corporation

I, John Rogers, President of Indivos Corporation, a Delaware corporation, attest that I have witnessed the execution of this document by Mark G. Thompson, Treasurer of Indivos Corporation.

Date: 8-8-03

By: John Rogers
John Rogers
President, Indivos Corporation

Docket No.	Provisional Application Serial No.	Filing Date	Application Serial No.	Filing Date	Patent No.	Issue Date	Inventor's Assignment Reel/Frame (pages)	Date	Assigned To:
8514-5			08/442,895	5/17/1995	5,613,012	3/18/1997	7567/0562 (4 pages)	5/17/1995	SmartTouch, LLC
8514-6			08/345,323	11/28/1994	5,615,217	3/25/1997	9525/0737 (3 pages)	10/22/1998	SmartTouch, Inc.
8514-7			08/739,313	10/29/1996	5,737,439	4/7/1998	8292/0624 (5 pages)	1/9/1997	SmartTouch, LLC
8514-8			08/722,629	9/27/1996	5,764,789	6/9/1998	8261/0255 (4 pages)	9/27/1996	SmartTouch, LLC
8514-9			08/818,872	3/17/1997	5,802,199	9/1/1998	8541/0709 (7 pages)	5/30/1997	SmartTouch, LLC
8514-10			08/820,008	3/18/1997	5,805,719	9/8/1998	8645/0502 (5 pages)	3/18/1997	SmartTouch, LLC
8514-11			08/687,251	7/25/1996	5,838,812	11/17/1998	8123/0336 (4 pages)	7/25/1996	SmartTouch, LLC
8514-12			08/705,399	8/29/1996	5,870,723	2/9/1999	8315/0449 (6 pages)	1/16/1997	SmartTouch, LLC
8514-13			08/902,151	7/29/1997	5,982,914	11/9/1999	8822/0659 (4 pages)	7/29/1997	SmartTouch, Inc.
8514-14			09/244,784	2/5/1999	6,012,039	1/4/2000	011170/0434 (10 pages)	9/28/2000	SmartTouch, Inc.
8514-16			09/098,318	6/16/1998	6,131,464	10/17/2000	9258/0474 (4 pages)	6/16/1998	SmartTouch, Inc.
8514-17			09/183,215	10/30/1998	6,366,682	4/2/2002	011623/0378 (5 pages)	3/5/2001	SmartTouch, Inc.
8514-18			29/097,014	11/25/1998	D425,873	5/30/2000	011292/0008 (5 pages)	11/14/2000	SmartTouch, Inc.
8514-19			09/330,253	6/10/1999	6,411,728	6/25/2002	011299/0507 (6 pages)	11/13/2000	SmartTouch, Inc.
8514-20			09/239,595	1/29/1999	6,230,148	5/8/2001	010614/0239 (8 pages)	1/29/1999	SmartTouch, Inc.
8514-21			09/239,570	1/29/1999	6,269,348	7/31/2001	010505/0282 (6 pages)	1/21/2000	SmartTouch, Inc.
8514-22			09/243,208	2/2/1999	6,192,142	2/20/2001	010894/0156 (4 pages)	7/10/2000	SmartTouch, Inc.
8514-23			09/245,501	2/5/1999	6,154,879	11/28/2000	010546/0565 (6 pages)	1/31/2000	SmartTouch, Inc.
8514-24			09/357,718	7/20/1999	6,397,198	5/28/2002	010993/0150 (5 pages)	7/24/2000	SmartTouch, Inc.
8514-25			09/398,914	9/16/1999			011057/0344 (3 pages)	8/21/2000	SmartTouch, Inc.
8514-26			09/441,107	11/16/1999			010908/0680 (3 pages)	6/27/2000	SmartTouch, Inc.
8514-50	60/208,680	5/31/2000	09/871,241	5/30/2001			011723/0657 (5 pages)	1/16/2001	SmartTouch, Inc.
8514-52			09/731,536	12/6/2000			011359/0599 (5 pages)	12/6/2000	VeriStar Corporation
8514-56			09/794,810	2/26/2001			9321/0795 (7 pages)	7/14/1998	SmartTouch, Inc.
8514-57			09/815,434	3/22/2001			011359/0599 (5 pages)	12/6/2000	VeriStar Corporation
8514-58			09/639,948	8/17/2000			012902/0505 (2 pages)	5/17/2002	VeriStar Corporation
8514-61			09/848,867	5/3/2001	6,581,042	6/17/2003	010614/0239 (8 pages)	1/29/1999	SmartTouch, Inc.
8514-61			09/879,370	6/11/2001			010505/0282 (6 pages)	1/21/2000	SmartTouch, Inc.
8514-75			10/056,982	1/23/2002			012900/0541 (3 pages)	5/13/2000	Indivos Corporation
8514-87			10/120,328	4/10/2002			010993/0150 (5 pages)	7/24/2000	SmartTouch, Inc.
8514-89			10/241,374	9/10/2002			7567/0562 (4 pages)	5/17/1995	SmartTouch, LLC
8514-100			09/215,058	12/17/1998			012722/0900 (5 pages)	3/22/2002	SmartTouch, Inc.
8514-101			10/114,587	4/12/2002	6,594,376	7/15/2003	011623/0378 (5 pages)	3/5/2001	SmartTouch, Inc.
8514-102			10/143,430	5/9/2002	6,591,002	7/8/2003	011299/0507 (6 pages)	11/13/2000	SmartTouch, Inc.
8514-110			10/619,990	7/14/2003			011623/0378 (5 pages)	3/5/2001	SmartTouch, Inc.

Docket No.	Transferred From:	Transferred To:	Reel/Frame (pages)	Recorded at:	Date	Transferred From:	Transferred To:	Reel/Frame (pages)	Recorded at:
8514-5	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)	10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-6					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-7	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)	10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-8	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)	10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-9	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)	10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-10	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)	10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-11	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)	10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-12	SmartTouch, LLC	SmartTouch, Inc.	9525/0621 (58 pages)	10/22/1998	SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-13					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-14					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-16					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-17					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-18					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-19					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-20					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-21					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-22					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-23					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-24					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-25					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-26					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-50					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-52					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-56					SmartTouch, Inc.	VeriStar Corporation	012902/0554 (21 pages)	5/17/2002	
8514-57									
8514-58									
8514-60					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-61					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-75									
8514-87									
8514-89									
8514-100					SmartTouch, Inc.	VeriStar Corporation	012786/0440 (21 pages)	3/22/2002	
8514-101					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-102					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	
8514-110					SmartTouch, Inc.	VeriStar Corporation	012010/0454 (22 pages)	7/24/2001	

Docket No.	Notes:
8514-5	
8514-6	
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8514-8	
8514-9	
8514-10	
8514-11	
8514-12	
8514-13	
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8514-25	
8514-26	
8514-50	Expressly abandoned in favor of 09/815,434 (8514-57).
8514-52	
8514-56	
8514-57	
8514-58	
8514-60	Relies on assignment in 09/239,595 (8514-20).
8514-61	Relies on assignment in 09/239,570 (8514-21).
8514-75	
8514-87	Relies on assignment from 09/357,718 (8514-24).
8514-89	No original assignment recorded. The listed recording is for 08/442,895 (8514-5), from where the specification is taken. We also rely on the assignment in 09/639,948 (8514-58) (the immediate parent application).
8514-100	
8514-101	Relies on assignment in 09/183,215 (8514-17).
8514-102	Relies on assignment in 09/330,253 (8514-19).
8514-110	Relies on assignment in 09/183,215 (8514-17).

Inventor match Case List

Attorney-Client Privileged- CONFIDENTIAL

<u>Docket No.</u> <u>Ref No.</u>	<u>Inventors</u>	<u>Country</u> <u>Status</u>	<u>App. No.</u> <u>Grant No.</u>	<u>App. Date</u> <u>Grant Date</u>	<u>Priority Info</u>	<u>Atty.</u>
Family Code: 8514-006						
8514-024 ST-A20	HOFFMAN NED*PARE, JR. DAVE FERRIN*LEE JONATHAN ALEXANDER*LAPSLEY PHILIP DEAN	US Granted	09/357,718 6,397,198	7/20/1999 5/28/2002	8514-005 08/442,895 8514-006 08/345,523 8514-012 08/705,399 8514-021 09/239,570	United States 5/17/1995 United States 11/28/1994 United States 8/29/1996 United States 1/29/1999
8514-025 ST-A21	HOFFMAN NED*LAPSLEY PHILIP DEAN	US Pending	09/398,914	9/16/1999	8514-005 08/442,895 8514-006 08/345,523 8514-012 08/705,399 8514-014 09/244,784	United States 5/17/1995 United States 11/28/1994 United States 8/29/1996 United States 2/5/1999
8514-052 STA-23	HOFFMAN NED*PARE, JR. DAVE FERRIN*LEE JONATHAN ALEXANDER*LAPSLEY PHILIP DEAN	US Granted	09/731,536 6,950,810	12/6/2000 9/27/2005	8514-005 08/442,895 8514-006 08/345,523 8514-012 08/705,399 8514-021 09/239,570	United States 5/17/1995 United States 11/28/1994 United States 8/29/1996 United States 1/29/1999
8514-057 ST-A28	HOFFMAN NED*PARE, JR. DAVE FERRIN*LEE JONATHAN ALEXANDER*LAPSLEY PHILIP DEAN	US Granted	09/815,434 6,879,966	3/22/2001 4/12/2005	8514-005 08/442,895 8514-006 08/345,523 8514-012 08/705,399 8514-021 09/239,570 8514-052 09/731,536	United States 5/17/1995 United States 11/28/1994 United States 8/29/1996 United States 1/29/1999 United States 12/6/2000

Exhibit EE (a)

<u>Docket No.</u> <u>Ref No.</u>	<u>Iventors</u>	<u>Country</u> <u>Status</u>	<u>App. No.</u> <u>Grant No.</u>	<u>App. Date</u> <u>Grant Date</u>	<u>Priority Info</u>		<u>Atty.</u>
8514-058 STA-25	HOFFMAN NED*LAPSLEY PHILIP DEAN	US Pending	09/639,948 (2007-2591)	8/17/2000	8514-005 08/442,895	United States 5/17/1995	ACJ/ASR
					8514-006 08/345,523	United States 11/28/1994	
					8514-012 08/705,399	United States 8/29/1996	
					8514-014 09/244,784	United States 2/5/1999	
					8514-025 09/398,914	United States 9/16/1999	
8514-087 ST-A32	HOFFMAN NED*PARE, JR. DAVE FERRIN*LEE JONATHAN ALEXANDER*LAPSLEY PHILIP DEAN	US Granted	10/120,328 6,920,435	4/10/2002 7/19/2005	8514-005 08/442,895	United States 5/17/1995	ACJ/ASR
					8514-006 08/345,523	United States 11/28/1994	
					8514-012 08/705,399	United States 8/29/1996	
					8514-021 09/239,570	United States 1/29/1999	
					8514-024 09/357,718	United States 7/20/1999	
8514-116	HOFFMAN NED*LAPSLEY PHILIP DEAN	US Pending	11/048,567	1/31/2005	8514-005 08/442,895	United States 5/17/1995	ACJ/ASR
					8514-006 08/345,523	United States 11/28/1994	
					8514-012 08/705,399	United States 8/29/1996	
					8514-014 09/244,784	United States 2/5/1999	
					8514-025 09/398,914	United States 9/16/1999	
8514-142 STA-040	LAPSLEY PHILIP DEAN*LEE JONATHAN ALEXANDER*PARE, JR. DAVE FERRIN*HOFFMAN NED	US Pending	11/109,096	4/18/2005	8514-005 08/442,895	United States 5/17/1995	ACJ/ASR
					8514-006 08/345,523	United States 11/28/1994	
					8514-012 08/705,399	United States 8/29/1996	
					8514-021 09/239,570	United States 1/29/1999	
					8514-052 09/731,536	United States 12/6/2000	

<u>Docket No.</u> <u>Ref No.</u>	<u>Iventors</u>	<u>Country</u> <u>Status</u>	<u>App. No.</u> <u>Grant No.</u>	<u>App. Date</u> <u>Grant Date</u>	<u>Priority Info</u>	<u>Atty.</u>	
8514-143 STA-041	HOFFMAN NED*PARE, JR. DAVE FERRIN*LEE JONATHAN ALEXANDER*LAPSLEY PHILIP DEAN	US Pending	11/109,895	4/18/2005	8514-005 08/442,895 8514-006 08/345,523 8514-012 08/705,399 8514-021 09/239,570 8514-024 09/357,718 8514-087 10/120,328	United States 5/17/1995 United States 11/28/1994 United States 8/29/1996 United States 1/29/1999 United States 7/20/1999 United States 4/10/2002	ACJ/ASR

8514-146	HOFFMAN NED*LAPSLEY PHILIP DEAN	US Pending	11/198,121	8/4/2005	8514-005 08/442,895 8514-006 08/345,523 8514-012 08/705,399 8514-014 09/244,784 8514-025 09/398,914	United States 5/17/1995 United States 11/28/1994 United States 8/29/1996 United States 2/5/1999 United States 9/16/1999	ACJ/ASR
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8514-154	HOFFMAN NED*LAPSLEY PHILIP DEAN	US Pending	11/321,138	12/28/2005	8514-005 08/442,895 8514-006 08/345,523 8514-012 08/705,399 8514-014 09/244,784 8514-025 09/398,914	United States 5/17/1995 United States 11/28/1994 United States 8/29/1996 United States 2/5/1999 United States 9/16/1999	ACJ/ASR
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Family Code: 8514-013

8514-013 ST-009	LEE JONATHAN ALEXANDER*PARE, JR. DAVE FERRIN*LAPSLEY PHILIP DEAN	US Granted	08/902,151 5,982,914	7/29/1997 11/9/1999			ACJ
8514-019 ST-A13	LEE JONATHAN ALEXANDER*PARE, JR. DAVE FERRIN*LAPSLEY PHILIP DEAN	US Granted	09/330,253 6,411,728	6/10/1999 6/25/2002	8514-013 08/902,151	United States 7/29/1997	ACJ
8514-102 ST-A36	LEE JONATHAN ALEXANDER*PARE, JR. DAVE FERRIN*LAPSLEY PHILIP DEAN	US Granted	10/143,430 6,591,002	5/9/2002 7/8/2003	8514-013 08/902,151 8514-019 09/330,253	United States 7/29/1997 United States 6/10/1999	ACJ/ASR

<u>Docket No.</u> <u>Ref No.</u>	<u>Inventors</u>	<u>Country</u> <u>Status</u>	<u>App. No.</u> <u>Grant No.</u>	<u>App. Date</u> <u>Grant Date</u>	<u>Priority Info</u>		<u>Attv.</u>
<u>Family Code: 8514-015</u>							
8514-015 ST-A8	HOFFMAN NED*PARE, JR. DAVE FERRIN*LEE JONATHAN ALEXANDER*LAPSLEY PHILIP DEAN	US Abandoned	09/020,363	2/9/1998			ACJ
8514-056 ST-A26	HOFFMAN NED*PARE, JR. DAVE FERRIN*LEE JONATHAN ALEXANDER*LAPSLEY PHILIP DEAN	US Granted	09/794,810 6,980,670	2/26/2001 12/27/2005	8514-015 09/020,363	United States 2/9/1998	ACJ/ASR
8514-150	HOFFMAN NED*PARE, JR. DAVE FERRIN*LEE JONATHAN ALEXANDER*LAPSLEY PHILIP DEAN	US Pending	11/245,662	10/7/2005	8514-015 09/020,363 8514-056 09/794,810	United States 2/9/1998 United States 2/26/2001	ACJ/ASR
<u>Family Code: 8514-050</u>							
8514-050 ST-A24	LAPSLEY PHILIP DEAN*GIOIA PHILIP J.*KLEEMAN MICHAEL	US Pending	09/871,241	5/30/2001	8514-050 60/208,680	United States 5/31/2000	ACJ
8514-050 ST-A24	LAPSLEY PHILIP DEAN*GIOIA PHILIP J.*KLEEMAN MICHAEL	US Completed	60/208,680	5/31/2000			ACJ
<u>Family Code: N/A</u>							
8514-007 ST-006	LAPSLEY PHILIP DEAN*LEE JONATHAN ALEXANDER*PARE, JR. DAVE FERRIN*HOFFMAN NED	US Granted	739,313 5,737,439	10/29/1996 4/7/1998			ACJ
8514-016 ST-A10	PARE, JR. DAVE FERRIN*LAPSLEY PHILIP DEAN*LEE JONATHAN ALEXANDER	US Granted	09/098,318 6,131,464	6/16/1998 10/17/2000			ACJ

USPTO PATENT FULL-TEXT AND IMAGE DATABASE[Home](#)[Quick](#)[Advanced](#)[Pat Num](#)[Help](#)[Bottom](#)[View Cart](#)*Searching US Patent Collection...***Results of Search in US Patent Collection db for:****IN/lapsley-philip-dean:** 9 patents.*Hits 1 through 9 out of 9*[Jump To](#) [Refine Search](#)

PAT. NO.	Title
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- | | | |
|---|---------------------------|--|
| 1 | 6,980,670 | Biometric tokenless electronic rewards system and method |
| 2 | 6,920,435 | Tokenless biometric electronic transactions using an audio signature to identify the transaction processor |
| 3 | 6,879,966 | Tokenless biometric electronic financial transactions via a third party indicatator |
| 4 | 6,591,002 | Association of finger pores and macrofeatures for identification of individuals |
| 5 | 6,411,728 | Association of finger pores and macrofeatures for identification of individuals |
| 6 | 6,397,198 | Tokenless biometric electronic transactions using an audio signature to identify the transaction processor |
| 7 | 6,131,464 | Pressure sensitive biometric input apparatus |
| 8 | 5,982,914 | Identification of individuals from association of finger pores and macrofeatures |
| 9 | 5,737,439 | Anti-fraud biometric scanner that accurately detects blood flow |

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Results of Search in PGPUB Production Database for:

IN/Lapsley-Philip\$: 10 applications.

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PUB. APP. NO.	Title
1 20060106734	System and method for processing tokenless biometric electronic transmissions using an electronic rule module clearinghouse
2 20060083408	Biometric tokenless electronic rewards system and method
3 20050289058	System and method for processing tokenless biometric electronic transmissions using an electronic rule module clearinghouse
4 20050203841	Tokenless biometric electronic transactions using an audio signature to identify the transaction processor
5 20050187843	Tokenless biometric electronic financial transactions via a third party indicicator
6 20050144133	System and method for processing tokenless biometric electronic transmissions using an electronic rule module clearinghouse
7 20020154795	Association of finger pores and macrofeatures for identification of individuals
8 20020111917	Tokenless biometric electronic transactions using an audio signature to identify the transaction processor
9 20020019811	Biometric financial transaction system and method
10 20010000535	Tokenless biometric electronic financial transactions via a third party indicicator

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Results of Search in PGPUB Production Database for:**IN/Gioia-Philip\$:** 1 applications.*Hits 1 through 1 out of 1*[Jump To](#)[Refine Search](#)

PUB. APP. NO. Title

1 20020019811 Biometric financial transaction system and method[Top](#)[View Shopping Cart](#)[Help](#)[Home](#)[Boolean](#)[Manual](#)[Number](#)[PTDLs](#)

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Results of Search in PGPUB Production Database for:

IN/Kleeman-Michael\$: 2 applications.

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PUB. APP. NO. Title

1 20020052868 SIMD system and method

2 20020019811 Biometric financial transaction system and method

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Exhibit EE (e)



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Assignments on the Web > Patent Query

Patent Assignment Assignor Details

NOTE: Results display only for issued patents and published applications. For pending or abandoned applications please consult USPTO staff.**Assignor Name : INDIVOS CORPORATION****Total Assignments: 6****Assignment: 1**Reel/Frame: [013429/0325](#)

Pages: 26

Recorded: 02/10/2003

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor1 [INDIVOS CORPORATION](#)

Exec Dt: 02/03/2003

Assignee1 [EXCEL INNOVATIONS, INC.](#)708 GRAVENSTEIN HIGHWAY NORTH
SUITE 111
SEBASTOPOL, CALIFORNIA 95472**Properties**

Pat #	Pub #	App #	Pat #	Pub #	App #	Pat #	Pub #	App #
5615277	NONE	08345523	5613012	NONE	08442895	5838812	NONE	08687251
5870723	NONE	08705399	5764789	NONE	08722629	5737439	NONE	08739313
5802199	NONE	08818872	5805719	NONE	08820008	5982914	NONE	08902151
6366682	NONE	09183215	6269348	NONE	09239570	6230148	NONE	09239595
6192142	NONE	09243208	6012039	NONE	09244784	6154879	NONE	09245501
6411728	NONE	09330253	6397198	NONE	09357718	6950810	US20010000535	09731536

Correspondence name and addressINTELLECTUAL PROPERTY LAW GROUP LLC
OTTO LEE, ESQ.
12 SOUTH FIRST STREET, 12TH FLOOR
SAN JOSE, CA 95113**Assignment: 2**Reel/Frame: [013462/0835](#)

Pages: 2

Recorded: 03/07/2003

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor1 [INDIVOS CORPORATION](#)

Exec Dt: 02/03/2003

Assignee1 [EXCEL INNOVATIONS, INC.](#)708 GRAVENSTEIN HIGHWAY NORTH
SUITE 111
SEBASTOPOL, CALIFORNIA 95472**Properties**

Pat #	Pub #	App #	Pat #	Pub #	App #	Pat #	Pub #	App #
6879966	NONE	09815434	6662166	US20010039533	09879370	6920435	US20020111917	10120328
7152045	US20030105725	10241374						

Correspondence name and addressINTELLECTUAL PROPERTY LAW GROUP PLLC
OTTO LEE, ESQ.

Exhibit FF

12 SOUTH FIRST STREET
12TH FLOOR
SAN JOSE, CA 95113

Assignment: 3**Reel/Frame:** 013490/0327**Pages:** 2**Recorded:** 03/14/2003**Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).**Assignor****1** INDIVOS CORPORATION**Exec Dt:** 02/03/2003**Assignee****1** EXCEL INNOVATIONS, INC.

708 GRAVENSTEIN HIGHWAY NORTH
SUITE 111
SEBASTOPOL, CALIFORNIA 95472

Properties

Pat #	Pub #	App #	Pat #	Pub #	App #	Pat #	Pub #	App #
<u>6980670</u>	NONE	09794810	<u>6581042</u>	<u>US20010029493</u>	09848867	<u>6594376</u>	<u>US20020174067</u>	10114587
<u>6591002</u>	<u>US20020154795</u>	10143430						

Correspondence name and address

INTELLECTUAL PROPERTY LAW GROUP LLC
OTTO LEE, ESQ.
12 SOUTH FIRST STREET, 12TH FLOOR
SAN JOSE, CA 95113

Assignment: 4**Reel/Frame:** 013862/0618**Pages:** 5**Recorded:** 08/11/2003**Conveyance:** MERGER (SEE DOCUMENT FOR DETAILS).**Assignor****1** INDIVOS CORPORATION**Exec Dt:** 07/23/2003**Assignee****1** INDIVOS CORPORATION

ONE MARKET STREET, SPEAR TOWER, 41ST FLOOR
SAN FRANCISCO, CALIFORNIA 94105

Properties

Pat #	Pub #	App #	Pat #	Pub #	App #	Pat #	Pub #	App #
<u>5615277</u>	NONE	08345523	<u>5613012</u>	NONE	08442895	<u>5838812</u>	NONE	08687251
<u>5870723</u>	NONE	08705399	<u>5764789</u>	NONE	08722629	<u>5737439</u>	NONE	08739313
<u>5802199</u>	NONE	08818872	<u>5805719</u>	NONE	08820008	<u>5982914</u>	NONE	08902151
<u>6131464</u>	NONE	09098318	<u>6366682</u>	NONE	09183215	<u>6269348</u>	NONE	09239570
<u>6230148</u>	NONE	09239595	<u>6192142</u>	NONE	09243208	<u>6012039</u>	NONE	09244784
<u>6154879</u>	NONE	09245501	<u>6411728</u>	NONE	09330253	<u>6397198</u>	NONE	09357718
<u>6950810</u>	<u>US20010000535</u>	09731536	<u>6980670</u>	NONE	09794810	<u>6879966</u>	NONE	09815434
<u>6581042</u>	<u>US20010029493</u>	09848867	NONE	<u>US20020019811</u>	09871241	<u>6662166</u>	<u>US20010039533</u>	09879370
<u>6594376</u>	<u>US20020174067</u>	10114587	<u>6920435</u>	<u>US20020111917</u>	10120328	<u>6591002</u>	<u>US20020154795</u>	10143430
<u>7152045</u>	<u>US20030105725</u>	10241374	<u>6985608</u>	<u>US20040020982</u>	10619990	<u>D425873</u>	NONE	29097014

Correspondence name and address

MARGER JOHNSON & MCCOLLOM, P.C.
ALEXANDER C. JOHNSON, JR.
1030 S.W. MORRISON ST.
PORTLAND, OREGON 97205

Assignment: 5**Reel/Frame:** 013933/0444**Pages:** 8**Recorded:** 09/03/2003**Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).**Assignor**

1 ~~INDIVOS CORPORATION~~

Exec Dt: 09/03/2003

Assignee

1 EXCEL INNOVATIONS, INC.

708 GRAVENSTEIN HIGHWAY NORTH, SUITE 111
SEBASTOPOL, CALIFORNIA 95472**Properties**

Pat #	Pub #	App #	Pat #	Pub #	App #	Pat #	Pub #	App #
<u>5615277</u>	NONE	08345523	<u>5613012</u>	NONE	08442895	<u>5838812</u>	NONE	08687251
<u>5870723</u>	NONE	08705399	<u>5764789</u>	NONE	08722629	<u>5737439</u>	NONE	08739313
<u>5802199</u>	NONE	08818872	<u>5805719</u>	NONE	08820008	<u>5982914</u>	NONE	08902151
<u>6366682</u>	NONE	09183215	<u>6269348</u>	NONE	09239570	<u>6230148</u>	NONE	09239595
<u>6192142</u>	NONE	09243208	<u>6012039</u>	NONE	09244784	<u>6154879</u>	NONE	09245501
<u>6411728</u>	NONE	09330253	<u>6397198</u>	NONE	09357718	<u>6950810</u>	<u>US20010000535</u>	09731536
<u>6980670</u>	NONE	09794810	<u>6879966</u>	NONE	09815434	<u>6581042</u>	<u>US20010029493</u>	09848867
<u>6662166</u>	<u>US20010039533</u>	09879370	<u>6594376</u>	<u>US20020174067</u>	10114587	<u>6920435</u>	<u>US20020111917</u>	10120328
<u>6591002</u>	<u>US20020154795</u>	10143430	<u>7152045</u>	<u>US20030105725</u>	10241374			

Correspondence name and addressINTELLECTUAL PROPERTY LAW GROUP LLP
OTTO LEE, ESQ.
400 WEST THIRD STREET
SUITE D108
SANTA ROSA, CA 95401**Assignment: 6**Reel/Frame: 017176/0427

Pages: 31

Recorded: 02/16/2006

Conveyance: GRANT OF PATENT SECURITY INTEREST (UNDER THE AMENDED AND RESTATED PATENT SECURITY AGREEMENT)

Assignor1 ~~INDIVOS CORPORATION~~

Exec Dt: 02/16/2006

Assignee

1 THE BANK OF NEW YORK, AS COLLATERAL AGENT

600 E. LAS COLINAS BLVD., SUITE 1300
IRVING, TEXAS 75039**Properties**

Pat #	Pub #	App #	Pat #	Pub #	App #	Pat #	Pub #	App #
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<u>5870723</u>	NONE	08705399	<u>5764789</u>	NONE	08722629	<u>5737439</u>	NONE	08739313
<u>5802199</u>	NONE	08818872	<u>5805719</u>	NONE	08820008	<u>5982914</u>	NONE	08902151
<u>6131464</u>	NONE	09098318	<u>6366682</u>	NONE	09183215	<u>6269348</u>	NONE	09239570
<u>6230148</u>	NONE	09239595	<u>6192142</u>	NONE	09243208	<u>6012039</u>	NONE	09244784
<u>6154879</u>	NONE	09245501	<u>6411728</u>	NONE	09330253	<u>6397198</u>	NONE	09357718
<u>6950810</u>	<u>US20010000535</u>	09731536	<u>6980670</u>	NONE	09794810	<u>6879966</u>	NONE	09815434
<u>6581042</u>	<u>US20010029493</u>	09848867	NONE	<u>US20020019811</u>	09871241	<u>6662166</u>	<u>US20010039533</u>	09879370
<u>6594376</u>	<u>US20020174067</u>	10114587	<u>6920435</u>	<u>US20020111917</u>	10120328	<u>6591002</u>	<u>US20020154795</u>	10143430
<u>7152045</u>	<u>US20030105725</u>	10241374	<u>6985608</u>	<u>US20040020982</u>	10619990	NONE	<u>US20040128249</u>	10734851
NONE	<u>US20050144133</u>	11048567	NONE	<u>US20050187843</u>	11109096	NONE	<u>US20050203841</u>	11109895
NONE	<u>US20050289058</u>	11198121	<u>D425873</u>	NONE	29097014			

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400 SOUTH HOPE STREET
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